No. 08A1096
Title: Indiana State Police Pension Trust, et al., Applicants
v.
Chrysler LLC, et al.
Docketed:
Lower Ct: United States Court of Appeals for the Second Circuit
Case Nos.: (09-2311-bk)

Date	Proceedings and Orders
Jun 6 2009	Application (08A1096) for a stay pending the filing and disposition of a petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit, submitted to Justice Ginsburg.
Jun 7 2009	Response to application from respondent The Official Committee of Unsecured Creditors filed.
Jun 7 2009	Response to application from respondent Chrysler LLC, et al. filed.
Jun 8 2009	Response to application from respondent United States filed.
Jun 8 2009	The orders of the Bankruptcy Court for the Southern District of New York, case No. 09-50002, dated May 31 and June 1, 2009, are stayed pending further order of the undersigned or of the Court.
Jun 9 2009	Supplemental brief of applicant Indiana State Police Pension Trust, et al. filed.
Jun 9 2009	Response to supplemental brief from respondent Fiat S.p.A. filed.
Jun 9 2009	Response to supplemental brief from respondent Chrysler LLC, et al. filed.
Jun 9 2009	Response to supplemental brief from respondent United States filed.
Jun 9 2009	Application (08A1096) referred to the Court.
Jun 9 2009	Application (08A1096) denied by the Court. The temporary stay granted by Justice Ginsburg on June 8, 2009, is vacated. Opinion per curiam.

Name	Address	Phone
Attorneys for Petitioners:		
Thomas M. Fisher	Solicitor General IGC South, Fifth Floor 302 W. Washington St. Indianapolis, IN 46204	(317) 232-6201
Party name: Indiana State Police Pension Trust, et al.		
Attorneys for Respondents:		
Jeffrey S. Trachtman	Kramer Levin Naftalis & Frankel, LLP 1177 Avenue of the Americas New York, NY 10036	
Party name: The Official Committee of Unsecured Creditors		
Thomas F. Cullen Jr.	Jones Day 51 Louisiana Avenue, N.W.	(202) 879-3939

	Washington, DC 20001	
Party name: Chrysler LLC, et al.		
Elena Kagan	Solicitor General United States Department of Justice 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0001	(202) 514-2217
Party name: United States		
Steven L. Holley	125 Broad Street New York, NY 10004-2498	(212)-558-4737
Party name: Fiat S.p.A.		

No. _____

In re Chrysler LLC, Debtor

INDIANA STATE POLICE PENSION TRUST, INDIANA STATE TEACHERS RETIREMENT FUND, INDIANA MAJOR MOVES CONSTRUCTION FUND,

Petitioners,

v.

CHRYSLER LLC, AKA CHRYSLER ASPEN, AKA CHRYSLER TOWN & COUNTRY, AKA CHRYSLER 300, AKA CHRYSLER SEBRING, AKA CHRYSLER PT CRUISER, AKA DODGE, AKA DODGE AVENGER, AKA DODGE CALIBER, AKA DODGE CHALLENGER, AKA DODGE DAKOTA, AKA DODGE DURANGO, AKA DODGE GRAND CARAVAN, AKA DODGE JOURNEY, AKA DODGE NITRO, AKA DODGE RAM, AKA DODGE SPRINTER, AKA DODGE VIPER, AKA JEEP, AKA JEEP COMMANDER, AKA JEEP COMPASS, AKA JEEP GRAND CHEROKEE, AKA JEEP LIBERTY, AKA JEEP PATRIOT, AKA JEEP WRANGLER, AKA MOPER, AKA PLYMOUTH, AKA DODGE CHARGER; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO ("UAW"), FIAT SPA. AND FIAT S.P.A AND NEW CARCO ACQUISITION LLC, UNITED STATES OF AMERICA EXPORT DEVELOPMENT CANADA, CHRYSLER FINANCIAL SERVICES LLC, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

Respondents.

APPLICATION FOR IMMEDIATE STAY OF SALE ORDERS ISSUED BY THE BANKRUPTCY COURT

DIRECTED TO HONORABLE RUTH BADER GINSBURG, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

THOMAS E LAURIA
GLENN M. KURTZ
OWEN C. PELL
KAREN M. ASNER
WHITE & CASE LLP
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036
(212) 819-8200

WHITE & CASE LLP
200 S. BISCAYNE BOULEVARD
MIAMI, FL 33131
(305) 371-2700

Counsel for Petitioners

GREGORY F. ZOELLER
Attorney General of Indiana

THOMAS M. FISHER
Solicitor General (Counsel of Record)

ASHLEY E. TATMAN
Deputy Attorney General
Office of the Attorney General
Indiana Govt Center South, 5th Fl.
302 West Washington Street
Indianapolis, Indiana 46204
(317) 232-6201

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29, each of the Indiana State Teachers Retirement Fund, the Indiana State Police Pension Trust, and the Indiana Major Moves Construction Fund hereby certifies that it (i) has no corporate parent and (ii) no publicly-owned corporation owns 10% or more of its equity stock.

No. _____

In the Supreme Court of the United States

In re Chrysler LLC, Debtor

INDIANA STATE POLICE PENSION TRUST, INDIANA STATE TEACHERS RETIREMENT FUND, INDIANA MAJOR MOVES CONSTRUCTION FUND,

Petitioners,

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CHRYSLER LLC, AKA CHRYSLER ASPEN, AKA CHRYSLER TOWN & COUNTRY, AKA CHRYSLER 300, AKA CHRYSLER SEBRING, AKA CHRYSLER PT CRUISER, AKA DODGE, AKA DODGE AVENGER, AKA DODGE CALIBER, AKA DODGE CHALLENGER, AKA DODGE DAKOTA, AKA DODGE DURANGO, AKA DODGE GRAND CARAVAN, AKA DODGE JOURNEY, AKA DODGE NITRO, AKA DODGE RAM, AKA DODGE SPRINTER, AKA DODGE VIPER, AKA JEEP, AKA JEEP COMMANDER, AKA JEEP COMPASS, AKA JEEP GRAND CHEROKEE, AKA JEEP LIBERTY, AKA JEEP PATRIOT, AKA JEEP WRANGLER, AKA MOPER, AKA PLYMOUTH, AKA DODGE CHARGER; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO ("UAW"), FIAT SPA, AND FIAT S.P.A AND NEW CARCO ACQUISITION LLC, UNITED STATES OF AMERICA EXPORT DEVELOPMENT CANADA, CHRYSLER FINANCIAL SERVICES LLC, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

Respondents.

APPLICATION FOR IMMEDIATE STAY OF SALE ORDERS ISSUED BY THE BANKRUPTCY COURT

To the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States and Circuit Justice of the United States Court of Appeals for the Second Circuit:

The Indiana State Teachers Retirement Fund, Indiana State Police Pension Trust, and the Indiana Major Moves Construction Fund (collectively, the "Indiana Pensioners") respectfully apply for an immediate stay, pending final resolution of a

forthcoming petition for writ of certiorari, of orders dated May 31 and June 1, 2009, entered by the Bankruptcy Court for the Southern District of New York in Case Number 09-50002, approving, pursuant to section 363 of the Bankruptcy Code, the sale of substantially all of Chrysler LLC's operating assets. Stay App. 8a-13a, JSPA-48-53; Stay App. 19a-67a, JSPA-54-102 [Bankr. Docket Nos. 3074, 3232] (the "Sale Orders").[1]

As described in greater detail below, a stay of the Sale Orders pending final resolution of the Indiana Pensioners' forthcoming petition for writ of certiorari—on as expedited a schedule as the Court finds necessary—is essential to preserve the Court's jurisdiction. **Without a stay, the section 363 sale will close as soon as Monday, June 8 at 4:00 p.m., which is when the present stay issued by the Second Circuit will be lifted.** Stay App. 74a (Second Circuit Mandate). Under section 363(m) of the Bankruptcy Code (11 U.S.C. § 363(m)), closing the sale will essentially moot the case.

If that happens, a number of consequences will follow:

(1) The United States Department of the Treasury ("Treasury"), purporting to utilize powers conferred upon it by the Troubled Asset Relief Program ("TARP") established under the Emergency Economic Stabilization Act of 2008, 12 U.S.C. 5201 ("EESA"), will have been permitted to structure and finance the reorganization of Chrysler without any judicial review of its authority to do so (the Bankruptcy Court incorrectly disposed of the issues by deciding that Appellants lacked standing);

(2) Chrysler will have been permitted to reorganize under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. 101 et seq. pursuant to a

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[1] "Stay App." Refers to the Appendix filed with this Petition. "JSPA" refers to the Joint Special Appendix filed with the Second Circuit in connection with the Indiana Pensioners' appeal. "JA" refers to the Joint Appendix filed with the Second Circuit in connection with the Indiana Pensioners' appeal. The complete bankruptcy docket for *In re Chrysler*, Case No. 09-5002, may be found at www.chryslerrestructuring.com.

transaction that was structured and financed by Treasury, without having been required to comply with the procedural and substantive requirements of the Bankruptcy Code for doing so; and

(3) The secured claims of Chrysler's first lien lenders (including the Indiana Pensioners) and any unsecured deficiency claims they may have if their collateral properly valued is in fact worth less than the amount they are owed, will have received materially less favorable treatment than most of Chrysler's general unsecured creditors.

As such, absent a stay, the Court will be deprived of the opportunity to decide critical, nationally significant legal issues relating to management of the economy by the United States Government. The government-sponsored reorganization of the U.S. auto industry, of which the Chrysler chapter 11 case is a significant (and at this point in time, leading) component, is a matter of incredibly high profile and importance. The public is watching and needs to see that, particularly, when the system is under stress, the rule of law will be honored and an independent judiciary will properly scrutinize the actions of the massively powerful executive branch.

Unless this Court acts to stay the execution of the pending Sale Orders, assets that Chrysler lawfully should use to satisfy its obligations to the Indiana Pensioners will be sold forthwith, resulting in economic harm measured in the millions of dollars to the Indiana Pensioners. Moreover, critical issues concerning the authority of Treasury to expend these funds for these purposes and to act as a party to a proceeding in derogation of important and fundamental tenets of the Bankruptcy Code will go unaddressed and erroneous rulings below will stand as a precedent for similar actions in the future.

DECISIONS BELOW AND JURISDICTION

On May 31 and June 1, 2009, the bankruptcy court issued the Sale Orders granting Chrysler LLC's ("Chrysler" or the "Debtors") Motion for an Order (A) Authorizing the Sale of Substantially All of the Debtors' Operating Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures and (C) Granting Certain Related Relief. [Bankr. Docket No. 190] (the "Sale Motion"). It also granted Debtor's motion to reduce the automatic statutory stay of enforcement of its orders from 10 days to 1 days. Stay App. 66a, JSPA-54-102 (Sale Order).

The Debtors-Appellees quickly filed a motion under Bankruptcy Rule 8001(f) for an order certifying the Sale Orders for immediate appeal to the Court of Appeals. [Bankr. Docket No. 3086] (the "Certification Motion"). The Indiana Pensioners consented to the Certification Motion. On June 2, 2009, the bankruptcy court entered an order certifying the Sale Orders for direct appeal to the Second Circuit. Stay App. 70a-71a, JSPA-304-05 (Order Certifying Appeal).

Also on June 2, 2009, the Second Circuit Court of Appeals took jurisdiction under 28 U.S.C. § 158(d)(2) and Bankruptcy Rule 8001(f) and, upon Appellant's request, issued an order staying the closing of the section 363 sale. Stay App. 72a-73a. The court heard oral arguments from the parties at 2:00 p.m. on June 5, 2009, announced its affirmance about 10 minutes after the close of argument, and less than three hours later issued its mandate affirming the Sale Orders and lifting its stay effective at 4:00 p.m., Monday June 8, 2009, or upon denial of a stay by this

Court. Stay App. 74a (Second Circuit Mandate). The court's mandate noted that the court would issue an opinion later (the court stated from the bench that the opinion would be issued by Monday), but said the court was affirming for substantially the reasons set for by the bankruptcy court. *Id.*

Notably, as reported on the front page of today's Wall Street Journal, one of the judges on the panel, Circuit Judge Sack, commented during the hearing that the Supreme Court should "have a swing at this ball." Neil King Jr., Jeffrey McCracken, "U.S. Pushed Fiat Deal On Chrysler," The Wall Street Journal, A1, June 6-7, 2009.

The Court has jurisdiction to review this case under 28 U.S.C. § 1254(1) and jurisdiction to stay the Sale Orders under 28 U.S.C. § 2101(f) and 28 U.S.C. § 1651 (the All Writs Act).

STATEMENT

The Indiana Pensioners are comprised of the Indiana State Police Pension Trust and the Indiana State Teachers Retirement Fund, pension funds that are fiduciaries for the investment of billions of dollars of retirement assets for approximately 100,000 Indiana civil servants, including police officers, school teachers and their families, and the Indiana Major Moves Construction Fund, an infrastructure construction fund, all of whom are holders of Chrysler First Lien Debt (as defined below).

Chrysler and certain of its affiliates are parties to an Amended and Restated First Lien Credit Agreement, dated as of August 3, 2007, with JPMorgan Chase Bank N.A. ("JPM"), as administrative agent (the "Administrative Agent"), and

certain lenders party thereto (the "First Lien Lenders"). The First Lien Lenders are owed $6.9 billion ("First Lien Debt"), of which the Indiana Pensioners hold $100 million, all of which is secured by a first lien on substantially all of Chrysler's assets (the "Collateral").

Chrysler filed for bankruptcy under chapter 11 of title 11 of the United States Code on April 30, 2009. On May 3, 2009, the Debtors filed a Sale Motion under 11 U.S.C. § 363 that sought to transfer all or substantially all of Chrysler's assets from "Old Chrysler" to a shell corporation—"New Chrysler." [Bankr. Docket No. 190] (Sale Motion). The Sale Motion was the product of a *de facto* corporate reorganization scheme orchestrated by the United States Treasury. In short, Treasury determined that Chrysler would (1) enter into a new collective bargaining agreement with the UAW, (2) enter into an alliance with Fiat by granting it an equity stake in exchange for access to certain intellectual property (but no cash or tangible assets), (3) exchange its existing $10 billion unsecured obligation to the Voluntary Employee Benefit Association (the "VEBA") (which provides retiree health and medical benefits) for a new $4.6 billion note and an equity stake, (4) receive billions of dollars of TARP loans from the Treasury, and (5) continue paying all other operating obligations (i.e., trade payables; warranty obligations; pension obligations) in the ordinary course. Treasury also determined that substantially all of Chrysler's existing secured debt (in addition to the $6.9 billion owed to the First Lien Lenders, Chrysler also owed $2.0 billion under a second lien facility to its parent, Cerberus, and $4.0 billion of third lien debt previously advanced by Treasury under TARP) would need to be eliminated.

In late March, it became apparent to Treasury that the First Lien Lenders would not agree to waive their right to priority payment derived from their lien on substantially all of Chrysler's assets. In response, Treasury devised a nonsubstantive revision to the structure that would create an argument that the First Lien Lenders' rights could be nonconsensually stripped. Instead of just reorganizing Chrysler as planned, Treasury directed that Chrysler would sell its assets "free and clear" of all interests under section 363 of the Bankruptcy Code for liquidation value to a newly-created shell corporation that would for all intents and purposes be reorganized "Chrysler" as described above. To accomplish this, although the transaction would be a going concern reorganization for substantially all other stakeholders, it would have to be treated as a liquidation for the First Lien Lenders—even though the whole purpose of the transaction was to save thousands of jobs and avoid the potentially ruinous effect of a Chrysler collapse on an already deeply troubled economy; in other words, to preserve Chrysler as a going concern. This was purportedly accomplished through three mechanisms: (1) Chrysler had its financial advisor develop a liquidation analysis that showed how poorly the lenders would fair in a liquidation; (2) auction procedures were developed to "market test" the intended liquidation-based recovery; and (3) Treasury announced that if it did not get its way, it would allow Chrysler to collapse regardless of the pain and suffering that would follow (obviously, without this, the liquidation analysis would be irrelevant).

The ploy in large part succeeded. A series of exchanges occurred in April between Treasury and the First Lien Lenders' agent, JPMorgan—itself a recipient

of TARP funds from Treasury—where the lenders indicated their willingness to substantially reduce the amount of their debt. This process ultimately lead to an agreement by four lenders, JPMorgan, Citibank, Goldman Sachs and Morgan Stanley (who held over 60% of the first lien debt in the aggregate), to settle the entire $6.9 billion amount of the first lien debt for a cash payment of $2.0 billion. Most of the lenders who held the rest of the first lien debt (none of whom had received any TARP bail-out funds), however, balked at the arrangement's obviously unfair treatment of their rights and attempted to engage in separate negotiations. These efforts, however, were firmly rejected by Treasury.

On its own, Chrysler did not think this was fair, but bowed to Treasury's demands. Before filing the section Sale Motion, Chrysler communicated to Treasury that it was interested in providing additional value to the First Lien Lenders, and had determined ways to finance such payment. The Debtors would "look at more vendor consolidations," and had "other ideas as well."[2] Treasury shut down such ideas with a curt response: "I'm now not talking to you. You went where you shouldn't." *Id.* Debtors hastily apologized, noting again that the estate had room to contribute to a solution: "Sorry. I didn't mean to say the wrong thing and I obviously did. I was trying to make sure that if we had to contribute to the solution you knew we had some room. Sorry I did not realize the mistake!!" *Id.* Again making clear its control, the U.S. Government responded "It's over. The President

[2] Motion papers filed under seal in district court, Second Glucksman Decl., Ex. B.

doesn't negotiate second rounds. We've given and lent billions of dollars so your team could manage this properly. . . ." *Id.*

Moreover, the record shows that Treasury directed Chrysler to reduce the amount of cash it had on hand prior to filing for bankruptcy. JA-3773 (E-mail correspondence between Ronald Kolka and Robert Manzo); JA-4044-45 (E-mail correspondence between Treasury and Chrysler). Although this runs counter to what troubled companies normally do—both because of duties owed to creditors and because such funds could be used to fund an orderly liquidation of a debtor's assets if that would generate the most money for secured creditors—here, it ensured that Chrysler would be wholly dependent on TARP funds from Treasury, which would strengthen the case for the section 363 Sale Motion.

Critically, the Sale Motion is premised on a $2 billion cash payment, which arose from a *liquidation* valuation rather than a going-concern valuation, of the Collateral to be sold to New Chrysler.[3] That is, while Chrysler is operating these assets now and will continue operating them as part of New Chrysler (where they were valued on a going concern basis at $20-30 billion), they valued those same assets on a liquidation basis at less than $2 billion for purposes of justifying only a partial payment to the First Lien Lenders. This unprecedented shift in valuation

[3] The record shows that this analysis, upon which the Sale Motion was premised, was prepared by the financial advisor to the Debtors who (i) actively negotiated and advocated the structure of the Chrysler bankruptcy with Treasury, and (ii) prepared the crucial liquidation analysis on a contingent fee basis, such that the advisor (Mr. Manzo) would personally receive $10 million if the Sale Motion succeeded. JA-4451-53 (Capstone Engagement Letter); JA-A-837-843 (Amended Capstone Engagement Letter). Although these facts were brought out on the record—along with a list of valuable Chrysler assets that Manzo omitted from his liquidation analyses—the bankruptcy court overruled objections by the Indiana Pensioners, allowed Manzo to testify as a source of

methodologies (which is not permitted by section 506(a) of the Bankruptcy Code) effectively diverted most of Chrysler's value away from the secured *and* unsecured claims of the First Lien Lenders to the unsecured creditors selected by Treasury who will be receiving substantial value on their unsecured claims from New Chrysler. Among other things, this liquidation analysis became the foundation for the bankruptcy court's ruling that the Indiana Pensioners have no standing to object to the sale because they were receiving more than the value of their Collateral. Stay App. 12a-13a, JSPA-52-53 (TARP Order).

The Debtors had the bankruptcy court set bidding procedures that required parties interested in purchasing the assets of Chrysler to submit final and binding bids, with no financial or due diligence contingency, in less than two weeks. JA-1613, 88:7-12, JA-1633, 169:1-7, JA-1638, 189:14-16, JA-1644, 210:8-14 (Hearing Testimony). Not only that, but bids had to include the same terms imposed by Treasury on Fiat and Chrysler, though Debtors admitted that those terms did not benefit the estate. JA-1636, 178:5-9, JA-1636, 179:10-180:13, JA-1637, 183:10-19, JA-1638, 188:8-15 (Hearing Testimony). Debtors also admitted that the bidding procedures were not likely to produce bids for such a large complicated transaction in such a short period of time. JA-1615, 97:12-22, JA-1634-35, 171:21-174:4, JA-1638-39, 189:23-190:1 (Hearing Testimony). The Indiana Pensioners (and other objecting creditors) then had only seven days to conduct discovery and go to trial on

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evidence on liquidation values and unquestioningly credited the liquidation valuation. Stay App. 28a, JSPA 63 (Sale Order).

the section Sale Motion. JA-753-816 (Order Approving Bidding Procedures and Setting Final Hearing on Sale Motion).

The bankruptcy court granted Debtor's motion on the terms requested by the Debtors, as outlined above.

REASONS FOR GRANTING THE APPLICATION FOR STAY

Without a stay, Chrysler's section 363 sale will be able to close Monday afternoon, and this case will be moot. Mootness would not only deprive the Indiana Pensioners of an opportunity for full recovery, but it would deprive the Court and the Nation of the opportunity for final determination of substantial and novel issues of law never before addressed by this Court or any other (save the decisions below). These issues include (i) whether the Sale attempted here—indisputably the fastest reorganization on record—constitutes an illegal *sub rosa* chapter 11 reorganization plan and violates the longstanding and fundamental rule that first-lien creditors have absolute priority in bankruptcy, and (ii) whether Treasury has the authority to direct the course of, and fund, this bankruptcy through the use of TARP funds under the EESA.* The Court should stay the Sale Orders so that the Indiana Pensioners may, in good order, ask the Court to review whether the law permits such wholesale alteration of bankruptcy law, not to mention the American capital markets, by the Executive Branch of the U.S. Government acting beyond the color of Congressional authority.

I. There is a Reasonable Probability that Certiorari will be Granted

The issues presented by this case are of immediate—and enduring—national significance, as courts below have recognized by accelerating the litigation and

commenting on the stakes. *See In re Chrysler, LLC*, No. 09-50002, 2009 WL 1490990, at *1 (S.D.N.Y. May 26, 2009) (noting the "rather short bankruptcy process" for a deal affecting over $7 billion in secured loans and involving the U.S. Government, an Italian automaker, and the third largest U.S. automaker); *In re Chrysler LLC*, 2009 WL 1507547, at *2 (Bankr. S.D.N.Y. 2009) (noting the billions of dollars and thousands of workers involved). Even the Treasury has expressly recognized in its initial filing with the bankruptcy court that this is an "extraordinary and unprecedented case." JA-233 (Treasury Statement in Support of Chrysler Bankruptcy). Furthermore, the decision below presents important issues relating to Treasury's use of TARP funds to finance the section 363 sale, concerning the valuation of the first-lien creditors' collateral, and respecting conflicts with decisions from other circuits and with this Court's own precedents on matters relating to the Bankruptcy Code. Accordingly, a grant of certiorari is reasonably likely.

1. Certiorari is likely to be granted because this is an incredibly important bankruptcy case, the details of which have been splashed across the front pages of major national newspapers for weeks, including today's Wall Street Journal. Regardless of its outcome, the Chrysler bankruptcy carries profound implications for the Nation's economy. Nearly everyone will feel the impact, from auto workers and suppliers to pensioners and bondholders to unrelated companies who hope to raise money through the sale of secured debt in the future.

In fact, notable economic scholars have cautioned that allowing the government to disrupt the absolute priority rule in bankruptcy proceedings will

destabilize the investment market. *See* Richard A. Epstein, *The Deadly Sins of Chrysler Bankruptcy*, http://www.forbes.com/2009/05/11/chrysler-bankruptcy-mortgage-opinions-columnists-epstein.html ("It is absolutely critical to follow these priority rules inside bankruptcy in order to allow creditors to price risk outside of bankruptcy."); *see also* Todd J. Zywicki, *Chrysler and the Rule of Law*, http://online.wsj.com/article/SB124217356836613091.html, (suggesting that government intervention with struggling companies will only become more commonplace if the rule of law is disrupted); Mark J. Roe, *Stress-Testing Washington's Chrysler Bankruptcy Plan*, http://www.forbes.com/2009/05/12/buffett-treasury-bankruptcy-opinions-contributors-chrysler.html ("This is not a good economic time to disrupt lending to troubled companies."). In addition, the players in the Chrysler bankruptcy understood that Treasury was using this case as a test for what would be attempted – on a much magnified scale – in the bankruptcy of General Motors. Indeed, in an email with Chrysler's CEO, Manzo made clear that Treasury was doing what it was doing because Chrysler was the "guinea pig." JA-1067 (E-mail correspondence between Robert Manzo and Thomas LaSorda).

The Chrysler and General Motors bankruptcies involve almost $100 billion in assets, and the Government, without any specific approval from Congress, is using the bankruptcy system to re-order private property rights on a scale and in a way that America has never before seen. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952) ("There is no statute that expressly authorizes the President to take possession of property as he did here."). Certiorari is warranted because the dangers of upsetting the procedural and substantive balances created

by the bankruptcy plan process (and resulting shift this may cause in the investment markets) should be examined thoroughly rather than rushed through the courts for the benefit of only one company. The Court should give itself and the Nation a chance to be sure that the Administration may lawfully impose such economic reorganization on the country and may do so in the manner and by the means employed in this case.

2. Certiorari is also likely because of the important precise legal issues, not least of which is whether Treasury is violating EESA by orchestrating and funding the sale with TARP funds. In particular, Treasury is using TARP funds to finance the following:

- substantially all of the Debtors' $5.3 billion of unsecured trade obligations, assumed and paid by reorganized Chrysler (JA-3223, § 2.08(b) (Fiat-Chrysler Agreement); JA-2972-75 (Kolka Aff.); JA-1573, 242:16-25 (Hearing Testimony);

- substantially all of the Debtors' prepetition warranty and dealer obligations—estimated by Chrysler at $4 billion—will be honored by reorganized Chrysler (JA-1573 , 243:15-19 (Hearing Testimony); JA-3224, §§ 2.08(g), (h) (Fiat-Chrysler Agreement);

- approximately $10 billion in unsecured claims owed to Chrysler's VEBA will be satisfied with a new promissory note from reorganized Chrysler in the amount of $4.6 billion to cover $10 billion in unsecured claims owed to Chrysler's VEBA (*see* JA-3207, Ex. K (Fiat-Chrysler Agreement); JA-3774-85 (UAW Modifications to 2007 Agreement and Addendum to VEBA Agreement) and (subject to dilution) 68% of the stock in reorganized Chrysler (which, if Fiat's 20% stake is worth the $6.9 billion the Debtor's CFO testified to (JA-1574 , 258:8-24 (Hearing Testimony)), is worth about $24 billion—approximately five times the amount of the VEBA obligation that is admittedly being satisfied with stock);

- $3.5 billion over three years to fund Chrysler's qualified pensions (JA-1571, 236:19-237:15 (Hearing Testimony); JA-3221, JA-3238-40, §§ 2.06(r), 3.15 (Fiat-Chrysler Agreement)); and

- Only $2 billion in cash (or roughly 28 cents on the dollar) will be paid in respect of nearly $7 billion owed to Chrysler's First Lien Lenders (JA-2976-77 (Kolka Aff.); JA-3227, § 2.13 (Fiat-Chrysler Agreement)).

Under EESA, however, Congress created TARP and granted the Secretary of the Treasury authority only to purchase "troubled assets" from "financial institution[s]." 12 U.S.C. § 5211(a)(1), JSPA-327. Specifically, Congress authorized the Treasury "to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with this Act and the polices and procedures developed and published by the Secretary." 12 U.S.C. § 5211(a)(1), JSPA-327.

This case presents the issue of whether an automobile manufacturer is a "financial institution" under EESA. Indeed, shortly after the EESA was enacted, Treasury Secretary Paulson was specifically asked at a House Financial Services Committee hearing whether TARP funds could be used to bail out automotive manufacturers. He testified that "the auto companies fall outside of [the] purpose" of TARP." Oversight of Implementation of the Emergency Economic Stabilization Act of 2008 and of Government Lending and Insurance Facilities: Impact on Economy and Credit Availability: Hearing Before the H. Comm. on Fin. Servs., 110th Cong. 19 (Nov. 18, 2008).

In response to this lack of coverage, the House passed the so-called "Auto Act," which provided for $14 billion in loans to the automotive industry (and a mere fraction of the $700 billion authorized under TARP). Auto Industry Financing and Restructuring Act, H.R. 7321, 110th Cong. § 10 (2008). A day later, however, the Senate rejected the Auto Act and abandoned further efforts to authorize any Executive Branch agency to bail out the automotive industry. Within a week, Secretary Paulson reversed his position that automakers were not eligible for TARP funds. Even then, however, Treasury again admitted that TARP is not available to car companies, unless they were engaged in "the provision of credit and financing." The Debtors here are not engaged in credit and financing, and Treasury has now taken the position that it may stretch TARP to provide implausibly broad authority to bail out any "institution," financial or not.

Furthermore, even if EESA permits Treasury to purchase the assets of an automobile manufacturer such as Chrysler, it expressly forbids altering the First Lien Lenders' claims. Section 119(b)(2) of EESA specifically precludes Treasury from rearranging lenders claims: "[a]ny exercise of the authority of the Secretary pursuant to this chapter shall not impair the claims or defenses that would otherwise apply with respect to persons other than the Secretary." 12 U.S.C. § 5229(b)(2), JSPA-347-48.

Whether Treasury is exceeding the limits of its statutory authority in a way that injures the Indiana Pensioners by financing a deal that harms their first-priority liens in the Chrysler Collateral is an important, nationally significant question that warrants the Court's review.

3. The bankruptcy court ruled that, because the Administrative Agent consented to this sale, and because under the court's valuation methodology the Indiana Pensioners did not suffer any collateral deficiency, the Pensioners had no grounds for objecting to the sale. As noted above, the $2 billion valuation employed by the bankruptcy court arose from a *liquidation* valuation rather than the *going-concern* valuation used to sell the assets. Under the bankruptcy code, however, a claim that is "secured by a lien on property in which the estate has an interest . . . is secured to *the extent of the value* of such creditor's interest in [such property]." 11 U.S.C. § 506(a)(1) (emphasis added). Further, under section 506(a), "value shall be determined *in light of the purpose of the valuation and of the proposed disposition or use* or on a plan affecting such creditor's interest." *Id.* (emphasis added).

The decision below permitting a shift in valuation methodologies, from going-concern value to liquidation value, violates section 506(a)(1) and conflicts with the Court's decision in *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 961-62 (1997). There, the Court ruled that the lower court had "rendered inconsequential the sentence [of section 506(a)(1)] that expressly addresses how 'value shall be determined'" by applying a foreclosure-value standard when the collateral was actually going to be used by the chapter 13 debtor to generate an income stream. Said the Court: "The *actual use*, rather than a foreclosure sale that will not take place, is the proper guide under a prescription hinged to the property's 'disposition or use.'" *Rash*, 520 U.S. at 963 (emphasis added). *See also In re Chateaugay Corp.*, 154 B.R. 29, 33 (Bankr. S.D.N.Y. 1993) (holding that section 506(a) requires a

secured claim to be valued on a going-concern basis rather than liquidation basis when the property will be used in a post-confirmation going concern).

Under the proper going-concern standard (which is the basis for the bankruptcy court's approval of the transaction), the First Lien Lenders' claims are properly valued at $6.9 billion. JA-1573 245:18-20 (Hearing Testimony). Hence, in light of the mere $2 billion allocated the First Lien Lenders under the sale, secured creditors such as the Indiana Pensioners plainly have suffered a security deficiency that they have retained the right to pursue. *See Assocs. Commercial Corp.*, 520 U.S. at 961-62; *In re Chateaugay Corp.*, 151 B.R. at 33.

Whether section 506(a)(1) permits shifting valuation methodologies is an important issue in many Chapter 11 bankruptcies, and if permitted as proposed here to justify section 363 sales, will effectively gut not only section 506(a)(1) but also all of the carefully considered protective structures and priorities of Chapter 11. This is yet another reason certiorari is likely to be granted.

4. Another glaring circuit conflict generated by the decision below is with the seminal *sub rosa* plan case *PBGC v. Braniff Airways, Inc. (In re Braniff Airways, Inc.)*, 700 F.2d 935, 940 (5th Cir. 1983), where the court held that "[t]he debtor and the bankruptcy court should not be able to short circuit the requirements of Chapter 11 for confirmation of a reorganization plan by establishing the terms of the plan *sub rosa* in connection with a sale of assets."

With that in mind, the court deemed a purported section 363 sale of substantially all of a debtor's assets to be a de facto reorganization where it "attempts to specify the terms whereby a reorganization plan is to be adopted" such

that "little would remain save fixed based equipment and little prospect or occasion for further reorganization." *Id.* at 940. In such a case, "the parties and the district court must scale the hurdles erected in Chapter 11 . . . ." *Id.* *See also Clyde Bergemann, Inc. v. The Babcock & Wilcox Co. (In re The Babcock & Wilcox Co.)*, 250 F.3d 955, 960 (5th Cir. 2001) ("[T]he provisions of § 363 . . . do not allow a debtor to gut the bankruptcy estate before reorganization or to change the fundamental nature of the estate's assets in such a way that limits a future reorganization plan."). Other circuits have come to similar conclusions. *See In re Abbotts Dairies of Pa.*, 788 F.2d 143, 150 (3d Cir. 1986) (holding that a section 363 sale cannot be used to abrogate the protections afforded to creditors by section 1129 of the Bankruptcy Code and the plan confirmation process).

Here, however, the Second Circuit and the bankruptcy court approved (without discussion) a section 363 sale that plainly would have been rejected in the Fifth and Third Circuits. The bankruptcy court relied heavily on the supposedly well-grounded business judgment supporting the sale without subjecting it to the chapter 11 testing that the Fifth Circuit quite plainly would have required. And although the issue was thoroughly briefed, the bankruptcy court's Sale Order, affirmed without elaboration (thus far) by the Second Circuit, said only, "[t]he consummation of the Sale Transaction outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The Sale Transaction does not constitute a *sub rosa* plan of reorganization." Stay App. 26a, JSPA-61 (Sale Order). Under the analysis

set forth in *Braniff*. Chrysler's attempts to ignore the protections provided to secured creditors under the Bankruptcy Code would have been invalidated.

5. The decisions below conflict with the Third Circuit's decision in *In re Armstrong World Industries, Inc.*, 432 F.3d 507, 513 (3d Cir. 2005), that the absolute priority scheme of the Bankruptcy Code applies where some senior creditors use their distributions to pay junior creditors at the expense of other senior creditors, who are not being paid in full. Here, the Second Circuit and the bankruptcy court permitted a section 363 sale that has the effect of granting preferential treatment to general creditors, namely the UAW, over first-lien secured creditors, including the Indiana Pensioners. The bankruptcy court, in clear contravention of *Armstrong World's* no-payoff rule, held that absolute priority did not apply because the property transferred by New Chrysler to junior creditors—such as the UAW's 55% stake in New Chrysler—was not "on account of" prepetition claims. This deal, however, represents exactly the kind of insiders' squeeze play that the absolute priority rule is designed to prevent. *See id.*

The decisions below thus conflict with *Armstrong World*, and they also conflict with the Court's own longstanding rule in bankruptcy cases "that preferential treatment of a class of creditors is in order only when clearly authorized by Congress." *Howard Delivery Serv. Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 655 (2006) (citing *Nathanson v. NLRB*, 344 U.S. 25, 29 (1952); *United States v. Embassy Restaurant, Inc.*, 359 U.S. 29, 31 (1959)).

6. This matter also raises an important issue of first impression: whether, and to what extent, section 363 of the Bankruptcy Code may be construed

to permit a debtor, even under exigent circumstances, to deal with substantially all of its assets and liabilities without complying with the Congressionally-mandated procedural and substantive protections specified in sections 1122-1129 of the Bankruptcy Code for such transactions. This Court has previously directed that Title 11 is a comprehensive, integrated statutory scheme that must be strictly construed as a whole. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989); *Lamie v. U.S. Trustee (02-693)*, 540 U.S. 526 (2004). Accordingly, a general provision such as section 363 of the Bankruptcy Code, which generally authorizes the sale of assets, may not be applied so as to overwrite the very detailed and specific provisions of the Bankruptcy Code that enumerate exactly the steps by which a debtor may restructure its assets and liabilities (sections 1122 through 1129 of the Bankruptcy Code). In the present case, not only has Chrysler used section 363 to convert its assets to currency to prevent further diminution in value, but if the Court looks at the economic reality of the transaction as this Court has instructed in bankruptcy matters (*Pepper v. Litton*, 308 U.S. 295 (1939)), Chrysler went a step further and established the terms on which substantially all of its liabilities would addressed and treated. If this is permitted to occur, section 363 will become a "fast-track mini-reorganization statute" under which debtors can reorganize quickly and distribute value in satisfaction of claims not pursuant to the Bankruptcy Code's long-standing priority scheme, but rather under whatever payment scheme may be imposed or directed by the party with the most negotiating leverage - - here, the Treasury using TARP funds. Moreover, the Sale Orders, by valuing Chrysler's operating assets one way (at liquidation value) for the First Lien

Lenders and another way (going concern value) with regard to the VEBA, the pension and other preferred creditors, establish a way around this Court's decision in *Assocs. Commercial Corp.*, 520 U.S. 953 (1997), which held that a secured lender's collateral must be valued on the basis of the contemplated use of the collateral. To prevent such abuse, this Court should clarify that a secured creditor's collateral must be valued based on the contemplated use, regardless of whether the transaction is accomplished pursuant to a sale under section 363 or a plan under sections 1122 through 1129.

For these reasons as well, there is a reasonable probability that at least four Justices will vote to grant review in this case.

II. There is a Fair Prospect that the Court will Reverse

1. With respect to the use of TARP funds to finance the section 363 sale here, the Court is likely to reverse the decision below because Treasury's interpretation of the EESA is implausible. It ignores the unambiguous terms of the statute, the history of its enactment and the Treasury's own prior interpretations. The Treasury Department's "interpretation" eviscerates the clear Congressional intent of TARP and violates the well-settled principle of statutory construction that every word in a statute has meaning, and no word may be rendered superfluous. *Leocal v. Ashcroft*, 543 U.S. 1, 12 (2004) ("we must give effect to every word of a statute wherever possible"); *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (we follow "the cardinal rule that statutory language must be read in context [since] a phrase gathers meaning from the words around it."). Treasury simply cannot read out the

word "financial," rendering the word, and the very purpose and history of TARP, meaningless.

Treasury's effort to read out the word "financial" also conflicts with Treasury Secretary Geithner's remarks to a House Appropriation sub-committee on May 21, 2009. Secretary Geithner said that he could not help states solve budget problems because "we are restricted to giving to financial institutions." *See* www.reuters.com/article/companynewsandpr/idvsn2052531520090521. For that same reason, the TARP funds also cannot be used help an automobile maker. The statute has to have the same meaning irrespective of the Treasury Department's interest at a particular point in time.

Additionally, EESA § 119(b)(2) specifically prohibits Treasury from rearranging lenders rights: "[a]ny exercise of the authority of the Secretary pursuant to this chapter shall not impair the claims or defenses that would otherwise apply with respect to persons other than the Secretary." 12 U.S.C. § 5229(b)(2), JSPA-347. The Court's Takings Clause doctrine essentially required this limitation. *See Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 589, 594 (1935) (invalidating a statute that placed the debtor in a position to hold secured property while delaying creditor claims almost indefinitely because Congress may not deny secured creditors their rights to realize upon the specific property pledged to them or "the right to control meanwhile the property during the period of default").

Here, however, Treasury conceived the strategy of reorganizing Chrysler through a section 363 sale, rather than pursuing a plan of reorganization, subject to

normal chapter 11 protections. As addressed above, the structure is a sham: Chrysler is plainly reorganizing. The company is effectively the same, only the secured creditors have been eliminated from the capital structure, and the unsecured creditors have been elevated. This plainly violates the EESA's statutory injunction against impairing existing claims and appropriates the Indiana Pensioners' property rights without providing just compensation.

2. With respect to the Bankruptcy Code, the Indiana Pensioners are likely to succeed because the valuation of its collateral plainly transgresses section 506 of the Code and because the transaction is a section 363 "sale" in name only. Upon consummation, New Chrysler will be Old Chrysler in essentially every respect.

The real substance of the transaction is the underlying reorganization it implements. Undesirable assets (and associated contingent liabilities) will be set aside for liquidation. JA-1965, 323:9-14 (Hearing Testimony, cross-examination of Nardelli) ("we're not putting in some of the factories, but I would say the majority of the valuable assets, to assure that the new business is an ongoing enterprise, would be the kind of the sales transaction going in for cash out."). A new investor will contribute certain technology and other intangibles in exchange for a minority stake in the business. New arrangements will be put in place for the financing of the business, including dealer and fleet purchases. Keegan Decl. ¶¶ 10-14; [Bankr. Docket No. 312]. Old equity will retain no interest, and a new board will be seated. JA-2979-80 (Kolka Aff.); Operating LLC Agreement § 5.3, Exhibit II to Notice of Filing of Master Transaction Agreement [Bankr. Docket No. 660].

None of these actions, however, requires an asset sale for implementation: all of it can be done through a chapter 11 plan. Most importantly, for purposes of *sub rosa* plan analysis, the rights of all major creditor groups will be dealt with. This *de facto* reorganization of the Debtors and the satisfaction of their claims, unless reversed by this Court, will be substantially accomplished in roughly 45 days (JA-3277 (Chrysler-Fiat Agreement § 10.01(c))), without a disclosure statement, without a plan, without stakeholder voting, without any assessment of the value of reorganized Chrysler or the relative recoveries of old Chrysler's creditors, without the vetting of objections to confirmation and without determining if the requirements of section 1129 have been satisfied—in short, without providing stakeholders any of the due process and substantive protections required by Congress under the Bankruptcy Code. Under these circumstances, the Indiana Pensioners have a fair prospect of prevailing on the merits.

III. Petitioners will Suffer Irreparable Harm Absent a Stay

The Indiana Pensioners will suffer irreparable harm absent a stay of the Sale Orders pending review by the Court because, absent a stay, the Sale will close on Monday, June 8, 2009, and, as a matter of statute, the case will be moot. That is, once the Collateral is "sold" to New Chrysler, section 363(m) of the Bankruptcy Code, which provides that reversal or modification of sale authorization on appeal "does not affect the validity of the sale or lease under such authorization to an entity that purchased or leased such property in good faith[,]" 11 U.S.C. § 363(m), JSPA-309, will essentially prevent it from being reversed.

Many courts have held that, once a plan is recognized and opportunity to stay the matter has passed, it is neither feasible nor equitable to go back and disrupt the process. *See Mac Panel Co. v. Va. Panel Corp.*, 283 F.3d 622, 625 (4th Cir. 2002) ("granting the relief requested by [the petitioner] on appeal would require the bankruptcy court to traverse a totally impractical, perhaps impossible, course—one that might be as daunting as the reconstruction of Humpty Dumpty."); *In re UNR Indus., Inc.*, 20 F.3d 766, 769 (7th Cir. 1994) ("Unless the [§ 363] sale is stayed pending appeal, the transaction survives even if it should not have been authorized in the first place."); *In re Stadium Mgmt. Corp.*, 895 F.2d 845, 847 (1st Cir. 1990) ("Absent a stay, the court must dismiss a pending appeal [of a § 363 sale] as moot because the court has no remedy that it can fashion even if it would have determined the issues differently.").

Courts have also recognized that in bankruptcy the elimination of a movant's rights by mootness is the "quintessential" form of prejudice to a party. *See also ACC Bondholder Group v. Adelphia Commc'ns. Corp. (In re Adelphia Commc'ns. Corp.)*, 361 B.R. 337, 347-48 (S.D.N.Y. 2007) ("where the denial of a stay pending appeal risks mooting any appeal of significant claims of error, the irreparable harm requirement is satisfied") (emphasis in original), *appeal dismissed*, 367 B.R. 84 (S.D.N.Y. 2007); *Country Squire Assocs. v. Rochester Cmty. Sav. Bank (In re County Squire Assocs.)*, 203 B.R. 182, 183-84 (B.A.P. 2d Cir. 1996) (granting stay and finding that irreparable harm where without a stay the foreclosure sale would proceed and moot the appeal); *In re St. Johnsbury Trucking Co.*, 185 B.R. 687, 688,

690 (S.D.N.Y. 1995) (concluding that movant established the threat of irreparable injury based on risk that appeal would be mooted if no stay were granted).

Finally, the possibility of mootness has traditionally satisfied the irreparable harm requirement for a stay from this Court. *See McDaniel v. Sanchez*, 448 U.S. 1318, 1322 (1980) (Powell, J., in chambers); *In re Roche*, 448 U.S. 1312, 1316 (1980) (Brennan, J., in chambers); *Wise v. Lipscomb*, 434 U.S. 1329, 1334 (1977) (Powell, J., in chambers); *In re Bart*, 82 S.Ct. 675, 675-76 (1962) (Warren, C.J., in chambers).

If the deal is allowed to go through, Old Chrysler will be left with all the worthless assets. The Indiana Pensioners' remaining investment will become unsecured and, as Chrysler's CEO Robert Nardelli testified, Old Chrysler will have no assets to satisfy the unsecured deficiency claims of the First Lien Lenders:

> Q. I'm talking about all the creditors of OldCo. How much money do you think will be left in OldCo after it is liquidated?
> A. I'm not sure how to answer the question, is that OldCo. will pay two billion dollars out to the first lien, and as I understand it, the liquidation of the assets would then go to the government to offset the DIP funding, except for what remains of some liabilities. But I-
> Q. So essentially there would be no value left?
> A. I think that's fairly correct.

JA-1985, 403:9-18 (Hearing Transcript).

Old Chrysler will be a valueless entity leaving unfavored creditors with no remedy, and unable to approach the debt repayment numbers achieved by the favored unsecured creditors.

IV. The Equities Favor Granting a Stay

The Debtors asserted to the bankruptcy court that it is losing $100 million per day by not closing. Stay App. 14a-15a (Debtors' Letter to Gonzalez J. re Waiver of Automatic Stay of Enforcement). This fact, however, was never proven by the Debtors at trial (the only source being the statement of a Treasury official at his deposition). Accordingly, there is no proof that the alleged loss would be mitigated by a closing of the Sale. To the contrary, Chrysler will not restart car production until mid-August. *See* JA-1700, 34:21-25 (Hearing Transcript). Thus, assuming expedited consideration of this case, a stay here will not cause Chrysler any harm.

Furthermore, any such alleged losses must be considered in context. In order to circumvent longstanding bankruptcy and commercial law, the U.S. Government, Chrysler and Fiat have created an artificial deadline designed to force the courts to quickly dispose of issues that deserve more careful judicial consideration. While it is true that Fiat *could* back out of the deal if it is not consummated by June 15, it has the express right to extend its purchase rights for another 30 days, and if is truly the only bidder, then there is no worry that the company will be sold to another in the interim. *See* Stay App. 27a, JSPA-62 (Sale Order). Additionally, the benefits for Fiat, expansion of their operations into the United States, and a potential of majority ownership of "New CarCo Acquisitions, LLC," as well as guaranteed government-backing of billions of dollars, make it unlikely to back out of a deal with such favorable terms. In addition, the U.S. Government, which has already given over $5 billion to Chrysler, has indicated its willingness to give billions more to complete the sale. All of this shows, combined with the

acknowledged public interest concerns, that the deal will not fall through if it is not completed by June 15. On the other hand, if the sale is completed, the Indiana Pensioners have no further recourse in bankruptcy court.

Moreover, the need for the Court to review the profound issues presented by Chrysler's novel bankruptcy sale far outweighs the cost of delaying a section 363 sale. As noted above, scholars have cautioned that allowing the U.S. Government to disrupt the absolute priority rule in bankruptcy proceedings will destabilize the investment market—and it is logical to think that it should, as no secured creditor can trust their liens again if the Treasury can define any "institution" as worthy of TARP funds and use an accelerated section 363 sale process to cram down transactions that wipe out secured claims. If they are correct, the negative economic consequences of permitting an unlawful sale to proceed may well over time dramatically outweigh Chrysler's short-term harm.

CONCLUSION

The Court should grant the application for stay.

Respectfully submitted,

/s/ Gregory F. Zoeller

THOMAS E LAURIA
GLENN M. KURTZ
OWEN C. PELL
KAREN M. ASNER
WHITE & CASE LLP
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036
(212) 819-8200

WHITE & CASE LLP
200 S. BISCAYNE BOULEVARD

GREGORY F. ZOELLER
Attorney General of Indiana

THOMAS M. FISHER
Solicitor General (Counsel of Record)

ASHLEY E. TATMAN
Deputy Attorney General
Office of the Attorney General
Indiana Government Center South,
Fifth Floor

MIAMI, FL 33131
(305) 371-2700

302 West Washington Street
Indianapolis, Indiana 46204
(317) 232-6201

Counsel for Petitioners

Dated: June 6, 2009

No. _____

In the Supreme Court of the United States

In re Chrysler LLC, Debtor

INDIANA STATE POLICE PENSION TRUST, INDIANA STATE TEACHERS RETIREMENT FUND, INDIANA MAJOR MOVES CONSTRUCTION FUND,

Petitioners,

v.

CHRYSLER LLC, AKA CHRYSLER ASPEN, AKA CHRYSLER TOWN & COUNTRY, AKA CHRYSLER 300, AKA CHRYSLER SEBRING, AKA CHRYSLER PT CRUISER, AKA DODGE, AKA DODGE AVENGER, AKA DODGE CALIBER, AKA DODGE CHALLENGER, AKA DODGE DAKOTA, AKA DODGE DURANGO, AKA DODGE GRAND CARAVAN, AKA DODGE JOURNEY, AKA DODGE NITRO, AKA DODGE RAM, AKA DODGE SPRINTER, AKA DODGE VIPER, AKA JEEP, AKA JEEP COMMANDER, AKA JEEP COMPASS, AKA JEEP GRAND CHEROKEE, AKA JEEP LIBERTY, AKA JEEP PATRIOT, AKA JEEP WRANGLER, AKA MOPER, AKA PLYMOUTH, AKA DODGE CHARGER; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO ("UAW"), FIAT S.P.A. AND NEW CARCO AQUISITION LLC,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2009, true and complete copies of the Application for Stay were served upon counsel for all parties by mailing same by overnight UPS delivery, facsimile, and electronic mail, to the following:

James L. Bromley, Esq.
Deborah M. Buell, Esq.
Cleary Gottlieb Steen & Hamilton, LLP
1 Liberty Plaza
New York, NY 10006
dbuell@cgsh.com
International Union of United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO (UAW)

Adina H. Rosenbaum, Esq.
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009
Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association for Consumer Advocates

Harley E. Riedel, Esq.
Stichter, Riedel, Blain & Prosser, P.A.
110 East Madison Street
Tampa, FL 33602
hriedel@srbp.com
Brian Catalon, Farbod Nouriani, William Lovitz

Glenn M. Kurtz, Esq.
Thomas E Lauria, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
gkurtz@whitecase.com
tlauria@whitecase.com
Indiana Pensioners

Peter Pantaleo, Esq.
David Eisenberg, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
ppantaleo@stblaw.com
deisenberg@stblaw.com

Gregory F. Zoeller, Esq.
Thomas M. Fisher, Esq.
Ashley Tatman, Esq.
Office of the Attorney General
302 W Washington Street, IGCS 5th Floor
Indianapolis, IN 46204-3795
Tom.Fisher@atg.in.gov
Ashley.Tatman@atg.in.gov
Indiana Pensioners

Phil Abelson, Esq.
Judy Liu, Esq.
Martin J. Bienenstock, Esq.
Dewey & LeBoeuf, LLP
1301 Avenue of the Americas
New York, NY 10019
pabelson@dl.com
jliu@dl.com
mbienenstock@dl.com
Chrysler Financial Services Americas LLC

Jeannette A. Vargas, Esq.
David S. Jones, Esq.
Tara M. La Morte, Esq.
U.S. Attorney's Office,
Western District of New York
86 Chambers Street
New York, NY 10007
jeannette.vargas@usdoj.gov
tara.lamorte2@usdoj.gov
matthew.troy@usdoj.gov
john.stemplewicz@usdoj.gov
United States of America

Joan Pilver, Esq.
Matthew F. Fitzsimmons Esq.
Office of the Attorney General/CT
110 Sherman St.
Hartford, CT 06105
joan.pilver@po.state.ct.us
matthew.fitzsimmons@po.state.ct.us
State of Connecticut

Jeffrey S. Trachtman, Esq.
Thomas Moers Mayer, Esq.
Ken Eckstein, Esq.
Kramer, Levin, Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
jtrachtman@kramerlevin.com
tmayer@kramerlevin.com
keckstein@kramerlevin.com
The Official Committee of Unsecured Creditors

Michael James Edelman, Esq.
Vedder Price, P.C.
1633 Broadway, 47th Floor
New York, NY 10019
mjedelman@vedderprice.com
Export Development Canada

John J. Rapisardi, Esq.
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
john.rapisardi@cwt.com

Roger D. Netzer, Esq.
Willkie Farr & Gallagher
787 Seventh Ave
New York, NY 10019
rnetzer@willkie.com
Oppenheimer Master Loan Fund, LLC
Oppenheimer Senior Floating Rate Fund

Nancy Winkelman, Esq.
Schnader Harrison Segal & Lewis LLP
140 Broadway
New York, NY 10005
nwinkelman@schnader.com
The Ad Hoc Committee of Consumer Victims of Chrysler

Scott D. Miller, Esq.
Andrew Dietderich, Esq.
Hydee R. Feldstein, Esq.
Sullivan & Cromwell, LLP
125 Broad Street
New York, NY 10004
millersc@sullcrom.com
dietdericha@sullcrom.com
feldsteinh@sullcrom.com
Fiat S.p.A. and New CarCo Aquisition LLC

Sander L. Esserman, Esq.
Stutzman Bromberg Esserman & Plifka, PC
2323 Bryan Street
Dallas, TX 75201
esserman@sbep-law.com
Patricia Pascale

Elena Kagan, Esq.
Neil Katyal, Esq.
Emily Spadoni, Esq.
William M. Jay, Esq.
Malcolm L. Stewart, Esq.
Office of the Solicitor General
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001
Emily.C.Spadoni@usdoj.gov
William.m.jay@usdoj.gov
Malcolm.L.stewart@usdoj.gov
United States of America

Corinne Ball, Esq.
Todd R Geremia, Esq.
Steven C. Bennett, Esq.
Gregory M. Shumaker, Esq.
Veerle Roovers, Esq.
Jones Day
222 E. 41st St.
New York, NY 10017
cball@jonesday.com
trgeremia@JonesDay.com
scbennett@jonesday.com
gshumaker@jonesday.com
vroovers@jonesday.com
Chrysler LLC

Babette Cerrotti, Esq
Cohen, Weiss and Simon LLP
330 W. 42nd St.
New York, NY 10036
bcerrotti@cwsny.com

/s/ Owen C. Pell
OWEN C. PELL
WHITE & CASE LLP
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036-2787

Counsel for Petitioners

No. _____

In re Chrysler LLC, Debtor

INDIANA STATE POLICE PENSION TRUST, INDIANA STATE TEACHERS RETIREMENT FUND, INDIANA MAJOR MOVES CONSTRUCTION FUND,

Petitioners,

v.

CHRYSLER LLC, AKA CHRYSLER ASPEN, AKA CHRYSLER TOWN & COUNTRY, AKA CHRYSLER 300, AKA CHRYSLER SEBRING, AKA CHRYSLER PT CRUISER, AKA DODGE, AKA DODGE AVENGER, AKA DODGE CALIBER, AKA DODGE CHALLENGER, AKA DODGE DAKOTA, AKA DODGE DURANGO, AKA DODGE GRAND CARAVAN, AKA DODGE JOURNEY, AKA DODGE NITRO, AKA DODGE RAM, AKA DODGE SPRINTER, AKA DODGE VIPER, AKA JEEP, AKA JEEP COMMANDER, AKA JEEP COMPASS, AKA JEEP GRAND CHEROKEE, AKA JEEP LIBERTY, AKA JEEP PATRIOT, AKA JEEP WRANGLER, AKA MOPER, AKA PLYMOUTH, AKA DODGE CHARGER; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO ("UAW"), FIAT SPA. AND FIAT S.P.A AND NEW CARCO ACQUISITION LLC, UNITED STATES OF AMERICA EXPORT DEVELOPMENT CANADA, CHRYSLER FINANCIAL SERVICES LLC, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

Respondents.

APPENDIX TO THE APPLICATION FOR STAY

GREGORY F. ZOELLER
Attorney General of Indiana

THOMAS M. FISHER
Solicitor General (Counsel of Record)

ASHLEY E. TATMAN
Deputy Attorney General
Office of the Attorney General
Indiana Government Center South,
Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
(317) 232-6201

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DATE FILED: 5/26/09

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11 Case No. 09-50002 (AJG) Jointly Administered
CHRYSLER, LLC., et al.,	:	
Debtors.	:	Civ. Case No. 09 Civ. 4743 (LAP)

OPINION

There are three motions before this court. The first is to withdraw the reference to the Bankruptcy Court. The second is to stay proceedings in the Bankruptcy Court pending determination of the motion to withdraw the reference. The third, assuming the withdrawal of the reference, is to appoint a Chapter 11 trustee and also to appoint an examiner.

For the reasons hereafter stated, the motion to withdraw the reference is denied. The motion for a stay is also denied since there is no reason for any such stay. Finally, since the motion to withdraw the reference is denied, the issues about appointment of a trustee and an examiner will remain with the Bankruptcy Court.

The above motions were filed in the District Court last Wednesday, May 20. The immediate purpose of the motion to withdraw the reference is to remove from the Bankruptcy Court the issues now scheduled to be heard in that Court tomorrow, Wednesday, May 27. These issues relate to the proposal to sell virtually all the assets of Chrysler to a new company, spoken of as "New Chrysler." This proposed sale will be described in more detail hereafter. The

motion to withdraw the reference and the related motions have been extensively briefed, and were the subject of a lengthy hearing held today. At the conclusion of that hearing, the Court announced the disposition of the motions in accordance with what is stated above. The purpose of the present opinion is to explain the reasons for the rulings, and this explanation will necessarily be somewhat brief in nature.

It might be useful here to explain what is meant by a motion to withdraw the reference. A Bankruptcy Court is part of the local United States District Court. In order for a bankruptcy case to be litigated in the Bankruptcy Court, there must be a reference of that matter by the District Court to the Bankruptcy Court. However, under established procedures all bankruptcy cases are considered to be automatically referred to a Bankruptcy Court. But under the bankruptcy law there can be, under certain circumstances, the "withdrawal of the reference," in order to move a particular matter back to the District Court.

The following is the background of the motion to withdraw the reference in the present case. The various Chrysler entities filed under Chapter 11 on April 30. The culmination of the rather short bankruptcy process has been the proposal to sell virtually all the assets of Chrysler to "New Chrysler," to be owned by the U.S. Treasury Department, the Italian automaker Fiat, and an entity named VEBA Trust, connected with the United Auto Workers. The

proposed sale is under Section 363 of the Bankruptcy Law, 11 U.S.C. § 363.

The terms of this proposed sale are objected to by various parties, who have filed such objections with the Bankruptcy Court. The parties whose objections have materialized into the motion to withdraw the reference are certain Indiana State pension and benefit funds (the "Indiana Funds"), which hold approximately $40 million in Chrysler's Senior Secured Loans. The total amount of such Senior Secured Loans outstanding is approximately $7 billion. These loans are secured by substantially all of Chrysler's assets. Under their terms they are scheduled to mature in 2013. Interest is paid quarterly. Thus far there have been no defaults in the payment of interest.

If the proposed § 363 sale is approved and takes place, virtually all of the collateral for the Senior Secured Loans will be transferred to New Chrysler, and will no longer be security for the Loans. The sum of $2 billion will be paid to the bankruptcy estate for distribution to the Senior Secured Lenders. The loans will remain outstanding to the extent that there will be a deficiency of about $5 billion. This deficiency will be secured by assets left behind at the old Chrysler entity, which assets are of uncertain value but will surely amount to only a fraction of $5 billion.

The Indiana Funds have objected to the proposed § 363 sale. Although about 90% of the Senior Secured Lenders have consented to the sale, the Indiana Funds and certain other Senior Secured Lenders take an

independent position, and assert that their priority position has not been properly accounted for in the proposed sale. They argue that the terms of the proposed sale were arrived at in a manner which was not faithful to the proper and legal handling of a Chapter 11 proceeding. They argue that the Chrysler management failed to perform its fiduciary duty to protect interested parties, including Senior Secured Lenders. The Indiana Funds argue that the Federal Government, specifically the White House and the Treasury Department, dictated the terms of the sale and provided a limited amount of financing, all without statutory or other legal basis. The Federal Government takes the position that what it has done in the Chapter 11 proceeding and in connection with the proposed sale is to be found in the Emergency Economic Stabilization Act of 2008 ("EESA"), 12 U.S.C. §§ 5201 et seq., which established the Troubled Asset Relief Program ("TARP").

The Indiana Funds take the position that EESA and TARP, properly interpreted, do not provide any authority for what the Federal Government did here. They claim that the Federal Government has therefore committed a major violation of a federal statute.

It is necessary at this point to present certain details of what occurred. In early 2009 the Federal Government loaned Chrysler $4 billion on the basis that the EESA and the TARP program permitted loans to auto companies. When the Chrysler bankruptcy emerged, the Federal Government

took two basic steps. The Government agreed to provide debtor-in-possession financing in the amount of about $3 billion. It should be noted that the Canadian Government agreed to make such financing available in the amount of about $1 billion, for a total of such financing from both Governments of over $4 billion. The other activity of the Federal Government in connection with the Chapter 11 proceeding was to take the steps that it did to arrange for the proposed § 363 sale.

As already indicated, the Indiana Funds contend that these actions by the Federal Government were not authorized by EESA and TARP, and therefore had no legal authority. They also urge that the movement of the collateral for the Senior Secured Loans to New Chrysler would amount to a taking in violation of the Constitution.

The position of the Indiana Funds is vigorously contested by Chrysler, by Fiat, by the representative of the 90% of the Senior Secured Lenders, by the Committee of Unsecured Creditors, by the Federal Government, and by the Canadian Government. In essence, they argue that the Federal Government had legal authority for what it did, that the proposed § 363 sale was the result of vigorous negotiation in which the responsible parties did their duty, and that the overwhelming majority of the relevant "constituents" are in favor of the proposed sale.

Above all, as relates to the issues before the court today, they

oppose taking away the matter from the Bankruptcy Court. The applicable statute is Section 157(d) of the bankruptcy law, 28 U.S.C. § 157(d), which provides:

> The district court shall, on timely motion of a party, . . . withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

However, the Second Circuit has expressly held that this language must be "construed narrowly." Shugrue v. Air Line Pilots Ass'n Int'l (In re Ionosphere Clubs, Inc.), 922 F.2d 984, 995 (2d Cir. 1990). This narrow construction means that a District Court should not withdraw the reference where bankruptcy issues to be resolved depend on the interpretation of a non-bankruptcy statute but that this interpretation is closely intertwined with standard bankruptcy considerations.

The latter is surely true in the present case. There is certainly a need to interpret EESA and TARP. But resolution of the issues about the § 363 sale involve a number of standard factual and legal issues presented in bankruptcy matters, including whether responsible parties performed their fiduciary duties, whether the terms of the proposed sale are such as to give proper recognition to secured creditors, and whether the proposed sale is in fact a reorganization, requiring the procedural protections given to the later

kind of proceeding.

There are surely issues to be decided by the Bankruptcy Court. But that is where they should be decided, subject to the right of appeal. At this late stage, when the Bankruptcy Court is nearing the completion of its work, it would be disruptive to remove the issues from a bankruptcy judge who has the background and is ready to complete his work.

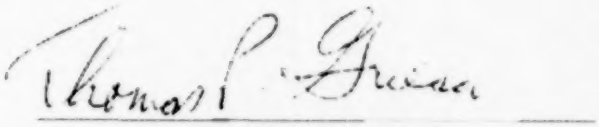
There should be a word about the issue of standing. This issue has been discussed extensively in the briefs. There is no time for full discussion in this opinion. The Court simply reiterates what was said at the hearing, and that is that the Indiana Funds have standing to make their motion to withdraw the reference and to make the related motions.

Conclusion

The motions to withdraw the reference, to grant a stay, and to have the District Court appoint a receiver and an examiner, are denied.

SO ORDERED.

Dated: New York, New York
May 26, 2009



THOMAS P. GRIESA
U.S.D.J.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
CHRYSLER LLC, *et al.*,	:	Case No. 09 B 50002 (AJG)
Debtors.	:	(Jointly Administered)

OPINION AND ORDER REGARDING EMERGENCY ECONOMIC STABILIZATION ACT OF 2008 AND TROUBLED ASSET RELIEF PROGRAM

On April 30, 2009 (the "Petition Date"), Chrysler LLC ("Chrysler") and 24 of its domestic direct and indirect subsidiaries (collectively with Chrysler, the "Original Debtors") filed for protection under title 11 of the United States Code (the "Bankruptcy Code"). On May 1, 2009, an Order was entered directing that the Original Debtors' cases be jointly administered for procedural purposes, pursuant to Rule 1015(a) of the Federal Rules of Bankruptcy Procedure. On May 19, 2009, Alpha Holding LP[1] ("Alpha" and with the Original Debtors, the "Debtors") filed a petition for relief under title 11 of the Bankruptcy Code. On May 26, 2009, an order (the "Alpha Order") was entered directing the joint administration of Alpha's bankruptcy case with the cases of the Original Debtors.[2] The Debtors continue to operate their respective businesses as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. On May 5, 2009, an Official Committee of Unsecured Creditors (the "Creditors' Committee") was formed.

[1]Alpha is a holding company that conducts no business other than holding capital stock of Chrysler Canada Inc. and Chrysler Mexico Holding S.de R.L. de C.V.

[2]In addition, the Alpha Order provided that, to the extent applicable, (a) any order that previously had been entered in the jointly administered Original Debtors' cases was applicable to Alpha, *nunc pro tunc*, to the date that Alpha filed its bankruptcy petition, and (b) that future orders entered in the Debtors cases would apply to Alpha.

There is no dispute that the Indiana State Teachers Retirement Fund, Indiana State Police Pension Trust, and the Indiana Major Move Construction (the "Indiana Funds") are parties in interest in this bankruptcy case under § 1109(b). *See* 11 U.S.C. § 1109(b) ("A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter."). The Indiana Funds are creditors in this case and may be heard on the issues they raised. *See In re Comcoach Corp.*, 698 F.2d 571, 573 (2d Cir. 1983). But standing under § 1109(b) is "generally interpreted broadly to allow parties in interest an opportunity to appear and be heard in proceedings that affect their interests." *Asbestos Settlement Tr. v. Porth Auth. of N.Y & N.J. (In re Celotex Corp.)*, 377 B.R. 345, 350 (Bankr. M.D. Fla. 2006). However, standing to be heard under § 1109(b) does not automatically impart upon the Court the ability to adjudicate all issues raised by parties in interest. *Allen v. Wright*, 468 U.S. 737, 750-51 (1984) ("In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.") (citing *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Rather, the Indiana Funds must still satisfy the prerequisites of standing that are attendant to any attempt to have a federal court adjudicate a dispute.

Standing Under the Emergency Economic Stabilization Act of 2008

In late 2008, Congress promulgated the Emergency Economic Stabilization Act of 2008 ("EESA") Pub L. NO. 110-343, 122 Stat. 3765 (Oct. 3, 2008) (codified at 12 U.S.C. §§ 5201 *et seq.*), which established the Troubled Asset Relief Program ("TARP"). TARP authorizes the Secretary of the Treasury (the "Secretary") to purchase troubled assets to restore confidence in

the economy and stimulate the flow of credit. The Indiana Funds have raised the issue that the U.S. Treasury has exceeded its Congressional grant of authority under EESA by providing financing under TARP to New CarCo Acquisition LLC (the "New Chrysler") to facilitate the acquisition of the Debtor's assets pursuant to the § 363 sale. Specifically, the Indiana Funds claim that the U.S. Treasury cannot use funds under TARP to finance the transaction because Congress prescribed the scope of EESA to permit the Secretary to purchase "troubled assets from any financial institution . . . ." 12 U.S.C. § 5211(a)(1).

As a threshold inquiry, the Court must determine whether the Indiana Funds have standing to challenge the actions of the U.S. Treasury pursuant to EESA and TARP. *See Warth*, 422 U.S. at 498 ("In its constitutional dimension, standing imports justiciability: whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III. This is the threshold question in every federal case, determining the power of the court to entertain the suit."). In a hearing before the United States District Court for the Southern District of New York (the "District Court"), the District Court found that the Indiana Funds have standing to raise and be heard on the motions before the District Court, namely, the Indiana Funds' (1) Motion to Withdraw the Reference and (2) Motion for a Stay. Nowhere in the District Court's opinion or the transcript of the hearing, referenced by the District Court in its opinion, did the District Court reach the issue of the Indiana Funds' standing under EESA. Rather, the District Court found that TARP and EESA needed to be interpreted. Interpretation of those statutes necEESArily requires a determination of whether the parties have standing to have the issues adjudicated. *See e.g., Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 831 (1999) (a "court

must be sure of its own jurisdiction before getting to the merits.") (citing *Steel Co. v. Citizens For Better Environment*, 523 U.S. 83, 88-89 (1998))

The issue of standing "involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." *Bennett v. Spear*, 520 U.S. 154, 162 (1997). The Supreme Court's standing jurisprudence has established three prerequisite elements to constitutional standing: (1) the plaintiff must have suffered an "injury in fact," which is actual or imminent, and that is a concrete and particularized invasion of a legally protected right; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely, not merely speculative, that the injury will be redressed by a favorable decision. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (internal citations omitted). These elements must be shown to satisfy the "case or controversy" requirement of Article III. Further, there are judicially-proscribed prudential limitations to standing, one of which is "the plaintiff's grievance must arguably fall within the zone of interests protected or regulated by the statutory provision or constitutional guarantee invoked in the suit." *Bennett*, 520 U.S. at 162 (internal citations omitted).

The Court finds that the Indiana Funds do not have standing under EESA to challenge the actions of the U.S. Treasury's pursuant to TARP in connection with this case. With respect to their secured claims, the Indiana Funds cannot allege an injury in fact for two reasons. First, in the "Opinion and Order Granting Debtor's Motion Seeking Authority to Sell, Pursuant to 11 U.S.C. § 363, Substantially All of the Debtors' Assets," (the "Sale Opinion") issued contemporaneously with this Opinion and Order, the Court found that the Indiana Funds are bound, under the Collateral Trust Agreement, by the Administrative Agent's agreement to

consent to the sale under § 363(f)(2) and to receive $2 billion upon the release of the collateral. The Administrative Agent agreed to the disposition of the collateral as set forth under the terms of the § 363 sale. Therefore the Indiana Funds are bound by that action and cannot allege an injury. Second, even if the Indiana Funds were not bound by the Administrative Agent's actions, in the Sale Opinion the Court found that the value of the collateral at issue was no greater than $2 billion, *i.e.*, the same amount the first lien senior secured lenders are receiving under the transaction approved pursuant to the Sale Opinion. Therefore, the Indiana Funds will receive the pro-rata distribution of the value of the collateral and cannot allege injury in fact.

Further, even if the Indiana Funds had an injury in fact with respect to their secured claim, the Indiana Funds cannot show the alleged injury is fairly traceable to the U.S. Treasury's use of TARP funds. If a non-governmental entity were providing the funding in this case, the Indiana Funds would be alleging the same injury, *i.e.*, interference with their collateral. In this light, it is not the actions of the lender that the Indiana Funds are challenging but rather the transaction itself. Specifically, the Indiana Funds' alleged injury is not fairly traceable to the U.S. Treasury's actions because the Indiana Funds would suffer the same injury regardless of the identity of the lender. For these reasons, the Court finds that the Indiana Funds do not have standing under EESA to challenge the actions of the U.S. Treasury pursuant to TARP.

Turning to the unsecured deficiency claim of the Indiana Funds, the Court finds that the Indiana Funds have similarly failed to show any injury in fact. In view of the fact that the face value of liens on the collateral exceeds the value of the collateral itself, all holders of unsecured claims are receiving no less than what they would receive under a liquidation. Therefore, there

is no injury with respect to the unsecured deficiency claim of the Indiana Funds. *See* 11 U.S.C. § 1129(a)(7)(A)(ii).

Further, as explained and for the reasons set forth above, even if an injury could be shown with respect to the Indiana Funds' unsecured claim, it is not fairly traceable to the actions of the U.S. Treasury under EESA and TARP.

Because the Indiana Funds do not have standing, the Court does not reach the merits of any of the TARP and EESA issues raised by the Indiana Funds.

Accordingly, it is hereby

ORDERED, the Indiana Funds lack standing to challenge the U.S. Treasury's actions under EESA and TARP; and it is further

ORDERED, any request for relief related to the issues regarding EESA and TARP is denied

Dated: New York, New York
May 31, 2009

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

June 1, 2009

Via E-Mail

The Honorable Arthur J. Gonzalez
United States Bankruptcy Court for the Southern District of New York
United States Customs House
One Bowling Green
New York, New York 10004-1408

Re In re Chrysler LLC, et al., Case No. 09-50002 (AJG)
Motion, dated May 3, 2009, for an Order Approving the Sale of Substantially All of the Debtors' Operating Assets Free and Clear of Liens, Claims, Interests and Encumbrances and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in connection therewith [Docket No. 190]

Dear Judge Gonzalez:

We, as counsel for Chrysler LLC, and its affiliates, as debtors and debtors in possession in the above-referenced chapter 11 cases (collectively, "Chrysler"), are responding to the inquiry of the Court regarding Chrysler's pending request, as part of the above-referenced motion (the "Sale Motion") for a waiver of the stay imposed by Bankruptcy Rule 6004(h) should the Court grant the Sale Motion in light of (i) events over the weekend, (ii) the letter submitted on behalf of certain dealers (the "Dealer Letter"), and (iii) the letter submitted by counsel for the Indiana State Teachers Retirement Fund, the Indiana State Police Pension Trust, and the Indiana Major Moves Construction Fund (collectively the "Indiana Pensioners") as the holders of $42 million of loans under the Amended and Restated First Lien Credit Agreement, dated November 29, 2007 among J.P. Morgan Chase Bank, N.A., as Administrative Agent, Carco Intermediate Holdco II LLC, Chrysler LLC and the Lenders Parties thereto (Debtors' Exhibit 12a, together with amendments thereto, Debtors' Exhibit 12b, the "First Lien Debt").

Execution copies of the Master Transaction Agreement by and among Chrysler, Fiat SpA and New Carco Acquisition LLC, as Purchaser, (Debtors' Exhibit 1) and the Transition Services Agreement among Chrysler and New Carco Acquisition LLC, as Purchaser, (Debtors' Exhibit 4) have been filed, and we are advised by counsel to the Purchaser that all regulatory approvals have been obtained, the Purchaser and the United States Treasury are ready to close on the Acquisition Finance Facility and, on 2 days notice, pay the purchase price of $2 billion.

Should the Court approve the Sale Motion, we hereby modify our request for a waiver of the stay imposed by Bankruptcy Rule 6004(h) to permit the sale to close on or after 9:00 a.m. on Thursday June 4, 2009.

A waiver of the Bankruptcy Rule 6004(h) stay is justified in this case due to the exigent circumstances facing Chrysler, including the continuing deterioration of its asset value, its supply chain, and its going concern value, as well as its continuing losses of $100 million a day

(Feldman Dep. at 42-43), which have caused Fiat SpA ("Fiat") to provide for a drop dead date of June 15, 2009, and its lender, the United States Treasury, to provide for a series of milestones designed to minimize its funding of these enormous continuing losses. See, e.g., Yamaha Motor Corp., USA v. Perry Hollow Mgmt. Co., Inc. (In re Perry Hollow Mgmt. Co., Inc.), 297 F.3d 34, 41 (1st Cir. 2002) (affirming decision to waive ten-day stay because sale price was reasonable, buyer was ready to complete sale next day and debtor would incur storage charges); Second Grand Traverse School and JS Dev. II, L.L.C. v. Boyd (In re Second Grand Traverse School), 100 Fed. Appx. 430, 434-35 (6th Cir. June 4, 2004) (affirming decision waiving ten-day stay because time was of the essence); In re Decora Indus., Inc., No. 00-4459 JJF, 2002 WL 32332749, *9 (D. Del. May 20, 2002) (waiving stay where immediate closing was required to remedy the debtors' precarious financial and business position).

In response to the Dealer Letter, it is apparent that the concern they raise is not caused by the Sale Motion or the assumption of over 2,400 dealer agreements contemplated thereby. Their concern is providing an opportunity for their dealer clients to convince Fiat to designate additional dealer agreements for assumption as provided in Section 2.10 of the Master Transaction Agreement. That procedure and process is already in place under the provisions of the Master Transaction Agreement and paragraph 19(c) of the Bidding Procedure Order entered by the Court [Docket No. 492] following hearings on May 1, 4 and 5, 2009 (the "Procedures Order"), under which until the applicable "Agreement Designation Deadline," Chrysler may, at the Purchaser's request or with the Purchaser's consent, designate additional contracts for assumption and assignment. Pursuant to the Procedures Order, the Agreement Designation Deadline for standard uniform dealership agreements in the form of the Chrysler Corporation Sales and Service Agreement, as well as the agreements in the form of the Chrysler Direct Dealer Agreement is **30 days after closing**. Hence the Dealers' concerns have been addressed and avoiding the damage delay causes to Chrysler, including its mounting losses, is reasonable and appropriate.

The Indiana Pensioners are owed $42 million. The Indian Pensioners have enjoyed the benefits of TARP loans under the Emergency Economic Stabilization Act ("EESA"), commencing on January 2, 2009 when Chrysler and the United States Treasury entered into a Loan and Security Agreement to provide $4 billion to Chrysler (Debtors' Exhibit 58, the "First Treasury Loan"). The First Treasury Loan is a publicly available document and was well publicized by the prior administration and the previous Treasury Secretary, Secretary Paulson. It was a loan that required and received consent under the First Lien Debt, as did the two additional extensions of TARP monies (one for the Supplier Program and another for the Customer Warranty Program), which were announced by President Obama concurrently with his announcement of the determination that Chrysler was not viable as a stand alone entity, but that the United States Treasury would provide up to $6 billion in loans to support an alliance with Fiat or another appropriate partner. Then on April 29, 2009, the Indiana Pensioners determined to consent to a sale to the Fiat/UAW company upon the payment from TARP monies of $2.225 billion on account of the entire amount of the first lien loans, executing a binding consent good for 90 days, if they received an aggregate of $16.4 million on account of their loans. Thereafter on April 30, 2009 a fourth extension of TARP monies for the Chrysler Debtor-in-Possession financing was announced by President Obama concurrently with Chrysler commencing these chapter 11 cases. The sale contemplated by the Sale Motion provides the Indiana Pensioners

with $15 million in cash. Hence the Indiana Pensioners seek to delay a closing at a minimal cost of $100 million a day to complain about TARP monies being loaned to Auto companies, but they were content, if only they could have had an additional $1.4 million of TARP monies (Proposed Debtors' Exhibit 57). These objectors put in no evidence, called no witnesses, and have put forth nothing to this Court which would provide any basis for saying anything other than the first lien loan is getting the value of its collateral. Instead they complain that TARP monies are funding the sale and funding the ongoing operation of the Purchaser, instead of paying them. In view of the limited monetary claim, these objectors should not be heard to insist that Chrysler suffer the injuries attendant upon delay.

Perhaps most importantly, given the stated intent of the Indiana Pensioners to pursue an appeal of their TARP/EESA arguments and obtain a stay of the sale to pursue same, we note that the very statute Indiana Pensioners rely upon has an anti-injunction provision, 12 U.S.C. § 5229(a)(2)(A), which any such stay would contravene. For that reason and the enormous interests at stake in this proceeding that are dependent upon closing the proposed sale transaction, Chrysler, joined by Purchaser, Fiat and the United States Government will concurrently be submitting their joint request to the Court for a certification pursuant to 28 U.S.C. § 158(d)(2).

In prohibiting injunctive relief to challenge the actions of the Treasury Secretary under TARP, the appellate process from the determinations made by the Court should not be able to achieve exactly the result Congress declined to permit. EESA did not create veto rights or append additional protections to the rights of creditors in bankruptcy. The Indiana Pensioners, if secured, have the right to the value of their collateral and that is exactly what they are getting. Any appeal they may misguidedly bring, must—in the interests of many others and the enormity of the situation—be resolved at the earliest opportunity. We together with the Purchaser, Fiat and the United States Government are prepared, following certification by the Court, to petition the Court of Appeals to hear any appeal.

The grievance may lie against the actions taken or omitted to be taken by their Administrative Agent, not Chrysler, in consenting to the proposed sale, provided that the First Lien Lenders receive all the collateral proceeds, which is exactly the result proposed. Should the Indiana Pensioners nevertheless wish to pursue their grievance against the government, some six months after the Secretary of the Treasury provided TARP monies to auto companies, other provisions of EESA clearly set forth the appropriate routes to pursue a challenge under the Administrative Procedures Act. Moreover, the statute authorizes an immediate and decisive response to a critical financial crisis and specifically discouraged judicial interference, creating instead a series of oversight measures, including (i) the transmission to Congress of a written determination by the Secretary of the Treasury that a proposed purchase of troubled assets is necessary to promote financial market stability, 12 U.S.C. § 5202(9)(B), (ii) a requirement that the Secretary of the Treasury submit reports to Congress on a monthly basis, describing the transactions occurring during that period, Id. at § 5215, (iii) a Congressional Oversight Panel, which reports on the use by the Secretary of the Treasury of his authority under EESA, Id. at § 5233(b)(1), (iv) the establishment of the Special Inspector General for the Troubled Asset Relief Program, and (v) the creation of the Financial Stability Oversight Board, which reviews the policies implemented by the Secretary of the Treasury to ensure that they are "in accordance with the purposes of the Act," Id. at § 5214(c)(1).

In their letter, the Indiana Pensioners make several statements that are not supported in either law or fact and, in some cases, are simply inappropriate. The Indiana Pensioners' attack on Chrysler's CEO and CFO is grossly out of line. Both men provided candid accounts of their efforts to maximize and preserve value for Chrysler and its stakeholders. The fact that they were then subjected to hours upon hours of meandering, ineffectual cross-examination from Messrs. Kurtz, Lauria and others only underscores how truthful their testimony was and how much they are willing to endure for the sake of the company. A witness's reluctance to be bullied and insulted is not the same as being unresponsive. Chrysler's witnesses told the truth. The Indiana Pensioners called no witnesses of their own and instead choose to rely solely upon innuendo for their contrary version of the facts. Messrs. Kurtz and Lauria got truthful responses. They just could not handle them.

In addition, Chrysler is not doing anything to deprive the Indiana Pensioners of their opportunity to make a case for a stay pending appeal under the established rules and case law for obtaining such relief. While Chrysler opposes such a request, the Indiana Pensioners are free to argue for the applicability of a stay under the applicable rules. Ultimately, this Court and the applicable appellate court will apply the established law to determine whether such a stay is appropriate under the circumstances and, if so, under what conditions. If the Indiana Pensioners are unable to establish a right of a stay pending appeal under the facts of this case and under the established law for evaluating such requests, that is the result required by law, not by any improper actions of Chrysler in this case.

As discussed in detail in Chrysler's Supplemental Memorandum of Law [Docket No. 2130], the Indiana Pensioners' contention that this proceeding cannot be construed as a Collateral Enforcement Action is without merit. A "Collateral Enforcement Action" is defined in the relevant documentation as, once an Event of Default is in effect, exercising any right with respect to the collateral under any law, including bankruptcy law. Consenting to the sale of assets in which the Collateral Trustee has a lien that attaches the proceeds of the sale is an exercise of a right under bankruptcy law, specifically section 363(f)(2) of the Bankruptcy Code. A contrary reading would require the individual consent of every lender to sell an asset in bankruptcy and would entirely defeat the very purpose of having a Collateral Trustee. See In re Enron Corp, 04 Civ. 1367, 2005 U.S. Dist. LEXIS 2134, at *26-*29 (S.D.N.Y. Feb. 14, 2005) (where collateral was pledged "to" a collateral trustee "for the benefit of" a bank group, bank group did not have standing to proceed against collateral in bankruptcy: "That the grant was made 'for the benefit of' the Bank Group is not sufficient to warrant the conclusion that the parties intended to give the Bank Group standing to proceed individually against the Pledged Collateral. If this were not so, the agreement's distinction between 'to' and 'for the benefit of' would be rendered meaningless, a result that would be inconsistent with well established rules of contract interpretation.").

We are available to answer any questions that the Court may have.

Respectfully Submitted,

Corinne Ball / BR

Corinne Ball

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
Chrysler LLC, *et al.*,	:	Case No. 09-50002 (AJG)
Debtors	:	(Jointly Administered)

ORDER (I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH AND RELATED PROCEDURES AND (III) GRANTING RELATED RELIEF

This matter coming before the Court on the motions, dated May 3, 2009 and May 22, 2009 (Docket Nos. 190 and 1742) (collectively, the "Sale Motion")[1] filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (the "Sale Order"), pursuant to sections 105, 363 and 365 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 6004-1, 6006-1 and 9006-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York: (i) authorizing and approving the entry into, performance under and terms and conditions of the Master Transaction Agreement, dated as of April 30, 2009 (collectively with all related agreements, documents or instruments and all exhibits, schedules and addenda to any of the foregoing, and as amended, the "Purchase Agreement"), substantially

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[1] Unless otherwise stated, all capitalized terms not defined herein shall have the meanings given to them in the Sale Motion and the Bidding Procedures Order (as defined below).

in the form attached hereto as Exhibit A (without all of its voluminous exhibits), between and among Fiat S.p.A. ("Fiat"), New CarCo Acquisition, LLC (the "Purchaser"), a Delaware limited liability company formed by Fiat, and the Debtors,[2] whereby the Debtors have agreed to sell, and the Purchaser has agreed to purchase the "Purchased Assets" (as such term is defined in Section 2.06 of the Purchase Agreement), which Purchased Assets include, without limitation, the Assumed Agreements (as defined below), substantially all of the Debtors' tangible, intangible and operating assets related to the research, design, manufacturing, production, assembly and distribution of passenger cars, trucks and other vehicles (including prototypes) under brand names that include Chrysler, Jeep® or Dodge (the "Business"), certain of the facilities related thereto and all rights, intellectual property, trade secrets, customer lists, domain names, books and records, software and other assets used in or necessary to the operation of the Business or related thereto to the Purchaser (collectively, and including all actions taken or required to be taken in connection with the implementation and consummation of the Purchase Agreement, the "Sale Transaction"); (ii) authorizing and approving the sale by the Debtors of the Purchased Assets, free and clear of liens, claims (as such term is defined by section 101(5) of the Bankruptcy Code), liabilities, encumbrances, rights, remedies, restrictions and interests and encumbrances of any kind or nature whatsoever whether arising before or after the Petition

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[2] The following Debtors are "Sellers" under the Purchase Agreement: Alpha Holding, LP ("Alpha"), Chrysler, LLC; Chrysler Aviation Inc.; Chrysler Dutch Holding LLC; Chrysler Dutch Investment LLC; Chrysler Dutch Operating Group LLC; Chrysler Institute of Engineering; Chrysler International Corporation; Chrysler International Limited, L.L.C.; Chrysler International Services, S.A.; Chrysler Motors LLC; Chrysler Realty Company LLC; Chrysler Service Contracts Florida, Inc.; Chrysler Service Contracts Inc.; Chrysler Technologies Middle East Ltd.; Chrysler Transport Inc.; Chrysler Vans LLC; DCC 929, Inc.; Dealer Capital, Inc.; Global Electric Motorcars, LLC; NEV Mobile Service, LLC; NEV Service, LLC; Peapod Mobility LLC; TPF Asset, LLC; TPF Note, LLC; and Utility Assets LLC.

Date,[3] whether at law or in equity, including all claims or rights based on any successor or transferee liability, all environmental claims, all change in control provisions, all rights to object or consent to the effectiveness of the transfer of the Purchased Assets to the Purchaser or to be excused from accepting performance by the Purchaser or performing for the benefit of the Purchaser under any Assumed Agreement and all rights at law or in equity (collectively, "Claims") (other than certain liabilities that are expressly assumed or created by the Purchaser, as set forth in the Purchase Agreement or as described herein (collectively, the "Assumed Liabilities")); (iii) authorizing the assumption and assignment to the Purchaser of certain executory contracts and unexpired leases of the Debtors (collectively, the "Assumed Agreements") in accordance with the Contract Procedures set forth in the Bidding Procedures Order, the Purchase Agreement and this Sale Order; (iv) authorizing and approving the entry into, performance under and terms and conditions of the UAW Retiree Settlement Agreement (as defined herein), and (v) granting other related relief; the Court having conducted a hearing on the Sale Motion on May 27, 2009 through May 29, 2009 (collectively, the "Sale Hearing") at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion; the Court having reviewed and considered, among other things, (i) the Sale Motion and the exhibits thereto, (ii) the Purchase Agreement attached hereto as Exhibit A, (iii) this Court's prior order (Docket No. 492), dated May 8, 2009 (the "Bidding Procedures Order") approving competitive bidding procedures for the Purchased Assets (the "Bidding Procedures"), (iv) all objections to the Sale Transaction filed in accordance with the Bidding Procedures Order or raised on the record at the Sale Hearing, (v) Memorandum of Law in Support of Sale Motion

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[3] As used herein, "Petition Date" refers to (a) April 30, 2009 for all of the Debtors other than Alpha and (b) May 19, 2009 for Alpha.

(Docket No. 191), (vi) Supplemental Memorandum of Law in Support of Sale Motion (Docket No. 2130), (vii) the Consolidated Reply to Objections to the Sale Motion (Docket Nos. 2155 and 2565), (viii) the Statement of the United States Department of the Treasury in Support of the Commencement of Chrysler LLC's Chapter 11 Case (Docket No. 69), (ix) the Statement of the Official Committee of Unsecured Creditors in Support of Debtors Motion for Order Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances (the "Creditors' Committee Statement"), and the related Memorandum of Law (Docket No. 1846 and 2147); (x) the Response to Various Objections Relating to Successor Liability Issues (Docket No. 2111); (xi) the Response of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America to Motion of the Debtors and Debtors in Possession for an Order Authorizing the Sale of Substantially All of the Debtors' Operating Assets and Other Relief (Docket No. 2085); (xii) the Supplemental Statement of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers Union of America, AFL-CIO in Support of Motion of the Debtors and Debtors in Possession for an Order Authorizing the Sale of Substantially All of the Debtors' Operating Assets and Other Relief and Response to Individual Retiree Statements Concerning Approval of UAW Retiree Settlement Agreement (Docket No. 2094) and (xiii) the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that due notice of the Sale Motion and the Bidding Procedures Order has been provided in accordance with the Bidding Procedures Order and that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates and creditors and other parties in interest; and upon the record of the Sale Hearing and these cases; and after due deliberation thereon; and good and sufficient cause

appearing therefore, including for the reasons set forth in the Court's Opinion dated May 31, 2009 (Docket No. 3073),

IT IS HEREBY FOUND AND DETERMINED THAT:

THE DEBTORS AND THESE CASES

A. As of the Petition Date and for a period of more than a year before the commencement of these chapter 11 cases, the Debtors worked with financial advisors and with their various constituencies to try to raise capital or implement a viable transaction that would allow them to continue the Debtors' operations. (See DX 20; May 27, 2009 Hearing Tr. (Testimony of Tom Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 87-92). The Debtors presented credible evidence that, as of the Petition Date, they had explored strategic alternatives for the Business over an extended period of time and had communicated with more than 15 parties about possible sales, mergers, combinations and alternatives regarding debt or equity capital investments or financing and had prepared standalone business plans in the event that strategic alternatives did not materialize or were insufficient. (See Id.). The Sale Transaction is the result of the Debtors' extensive efforts

JURISDICTION, FINAL ORDER AND STATUTORY PREDICATES

B. This Court has jurisdiction over the Sale Motion, the Sale Transaction and the Purchase Agreements pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a), and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of these cases and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. Debtor Peapod Mobility LLC ("Peapod") is a New York limited liability company. Debtor Chrysler Realty Company LLC ("Chrysler Realty") is the owner of certain valuable real property located on

11th Avenue in New York, New York. Debtor Chrysler is the direct or indirect parent of Peapod, Chrysler Realty and each of the other Debtors.

C. This Sale Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and expressly directs entry of judgment as set forth herein.

D. The statutory predicates for the relief sought in the Sale Motion and granted in this Sale Order include, without limitation, sections 105(a), 363(b), (f) and (m) and 365(a), (b) and (f) of the Bankruptcy Code, and Bankruptcy Rules 2002, 6004 and 6006.

JUDICIAL NOTICE

E. Pursuant to Federal Rule of Evidence 201(c), incorporated into these proceedings pursuant to Bankruptcy Rule 9017, the Court takes judicial notice of the (1) March 30, 2009 Remarks by the President of the United States on the American Automotive Industry; (2) April 30, 2009 Remarks by the President of the United States on the Auto Industry; and (3) the fact of the publication of the Notice of Proposed Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and Final Sale Hearing Related Thereto in the national editions of *The New York Times* on May 12, 2009, *The Wall Street Journal* on May 12, 2009 and *USA Today* on May 13, 2009, and the worldwide edition of *The Financial Times* on May 13, 2009. (See DX 8; DX 18; DX 19).

SOUND BUSINESS PURPOSE

F. The Debtors seek to convey the Purchased Assets, including those related to the research, design, manufacture (at 16 domestic manufacturing facilities), assembly (at seven domestic assembly plants) and wholesale distribution of passenger cars and trucks under

the brand names Chrysler, Jeep® and Dodge, all of which are subject to Claims, including those held by the Debtors' prepetition secured lenders. (See DX 64, at §2.06).

G. In the second half of 2008, Chrysler began to experience an "unprecedented" loss of cash (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)). Currently, the Debtors are losing over $100 million dollars per day. (See Deposition of Matthew Feldman, May 26, 2009, at 65:18-66:5). Unless the Sale Transaction is approved without delay, the Debtors' assets will continue to erode, and they will be forced to liquidate in the near term. (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Frank Ewasyshyn, May 24, 2009, at Exhibit 1, at 7-29)).

H. The Debtors have demonstrated, and the Purchase Agreement reflects, both (1) good, sufficient and sound business purposes and justifications for the immediate approval of the Purchase Agreement and the Sale Transaction (May 28, 2009 Hearing Tr. (Testimony James Chapman); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); and (2) compelling circumstances for the approval of the Purchase Agreement and the Sale Transaction outside of the ordinary course of the Debtors' business pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Sale Motion is not granted on an expedited basis (See May 28, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli), Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 9-27; Deposition of Frank Ewasyshyn, May 24, 2009, Exhibit 1, at 8-29). In light of the exigent circumstances of these chapter 11 cases and the risk of deterioration in the going concern value of the Purchased Assets pending the proposed Sale Transaction, time is of the essence in (a) consummating the Sale Transaction, (b) preserving

the viability of the Debtors' businesses as going concerns and (c) minimizing the widespread and adverse economic consequences for the Debtors' estates, their creditors, employees, retirees, the automotive industry and the broader economy that would be threatened by protracted proceedings in these chapter 11 cases. (See DX 13; DX 14; May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Ronald Nardelli); May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of James Chapman); Deposition Tr. of Ronald Bloom, at 65; see generally DX 20).

I. The consummation of the Sale Transaction outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The Sale Transaction does not constitute a *sub rosa* plan of reorganization. (See DX 4; DX 5; DX 10; May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)).

J. Entry of an order approving the Purchase Agreement and all the provisions thereof is a necessary condition precedent to the Purchaser's consummation of the Sale Transaction, as set forth in the Purchase Agreement. (See DX 64, at § 8.02(q))

K. The Purchase Agreement was not entered into, and none of the Debtors, the Purchaser or the Purchaser's present or contemplated owners, have entered into the Purchase Agreement or propose to consummate the Sale Transaction, for the purpose of hindering, delaying or defrauding the Debtors' present or future creditors. None of the Debtors, the Purchaser nor the Purchaser's present or contemplated owners is entering into the Purchase Agreement, or proposing to consummate the Sale Transaction, fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under

the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing. (See DX 5; DX 6; DX 10, May 27, 2009 Hearing Tr. (Testimony of Altavilla)).

HIGHEST AND BEST OFFER

L. On May 8, 2009, this Court entered the Bidding Procedures Order approving Bidding Procedures for the Purchased Assets. The Bidding Procedures provided a full, fair and reasonable opportunity for any entity to make an offer to purchase the Purchased Assets. No additional Qualifying Bids for the Purchased Assets were received by the Debtors. Therefore, the Purchaser's bid, as reflected in the Purchase Agreement, is the only Qualified Bid for the Purchased Assets and was designated as the Successful Bid pursuant to the Bidding Procedures Order (Docket No. 492). Likewise, no party came forward at the Sale Hearing with a bid or offer. As such, no Auction was conducted, and the Purchaser's bid, as reflected in the Purchase Agreement, was presented to the Court as the Successful Bid. (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)).

M. As demonstrated by the testimony and other evidence proffered or adduced prior to or at the Sale Hearing, and in light of the exigent circumstances presented and emergency nature of the relief requested (1) the Debtors have adequately marketed the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Scott Garberding, May 24, 2009, Exhibit 2, at 87-92)), (2) the Purchased Assets are deteriorating rapidly in value and there are good business reasons to sell these assets outside of a plan of reorganization (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Frank Ewasyshyn, May 24, 2009, at Exhibit 1, at 7-29; Deposition of Matthew Feldman, May 26, 2009, at 65:21-66:5)), (3) the consideration

provided for in the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo), May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (4) the Sale Transaction, as a transfer of deteriorating assets, is an extraordinary, non-market transaction, the consideration for which exceeds what would have been obtainable in a transaction subject to ordinary market forces (See Deposition of Ronald Bloom, May 26, 2009, at 65:4-66:10); (5) the Sale Transaction is the only alternative to liquidation available to the Debtors (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (6) if the Sale Transaction is not approved and consummated, the Debtors will have no alternative but to cease operations and liquidate (See May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (7) the Sale Transaction will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including, without limitation, liquidation whether under chapter 11 or chapter 7 of the Bankruptcy Code (See DX, May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)); (8) no other party or group of parties has offered to purchase the Purchased Assets for greater economic value to the Debtors or their estates (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo); May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)); (9) the consideration to be paid by the Purchaser under the Purchase Agreement exceeds the liquidation value of the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)) and (10) the consideration to be paid by the Purchaser under the Purchase Agreement constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the

United States, any state, territory or possession thereof or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to the foregoing. (See DX 14, DX 15; May 28, 2009 Hearing Tr. (Testimony of James Chapman), May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)). The Debtors' determination that the Purchase Agreement constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment. (See May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of James Chapman); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli)).

N. Neither the Purchaser nor Fiat have furnished the Debtors with a good faith deposit in connection with the Purchase Agreement. The Debtors submit that in light of the extensive prepetition negotiations culminating in the various complex agreements with the Debtors, the United States Department of the Treasury (the "U.S. Treasury"), the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (the "UAW") and other stakeholders, as well as Fiat's substantial investment of time and resources, the Purchaser's and Fiat's commitment to consummate the Fiat Transaction is clear without the need to provide a good faith deposit. See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 (Testimony of David Curson); May 28, 2009 (Testimony of Robert Nardelli); May 28, 2009 (Testimony of James Chapman), Deposition of Matthew Feldman, May 26, 2009, at 37:21-39:1))

BEST INTEREST OF CREDITORS

O. Approval of the Purchase Agreement and the consummation of the Sale Transaction with the Purchaser at this time is in the best interests of the Debtors, their estates, creditors, employees, retirees and other parties in interest. (See DX 6, Creditors' Committee Statement, at ¶ 2, Docket No. 1846; May 28, 2009 Hearing Tr. (Testimony of David Curson))

DESCRIPTION OF THE PURCHASER AND THE PURCHASER'S GOOD FAITH

P. The Purchaser is a newly formed Delaware limited liability company that as of the date of the Sale Hearing, is a wholly-owned subsidiary of Fiat. The Purchaser is not an "insider" of any of the Debtors, as that term is defined by section 101(31) of the Bankruptcy Code. (See DX 64, at Art. IV-A).

Q. Upon the closing of the Sale Transaction (the "Closing"), (1) Fiat will contribute to the Purchaser certain valuable technology and management expertise, (2) the U.S. Treasury and Export Development Canada ("EDC") will lend the Purchaser approximately $8 billion in new financing and (3) the UAW Retiree Settlement Agreement, the entry into which is a condition to the UAW CBA (as defined below) and its assumption and assignment to Purchaser, will become effective. Following the making of the foregoing contributions to the Purchaser, Fiat, the VEBA (as defined below), the U.S. Treasury and EDC, through 7169931 Canada Inc., will hold 100% of the equity in the Purchaser. (DX 3; DX 64, Exhibit J, K).

R. The Purchaser is a person with whom the Debtors are associated within the meaning of section 525 of the Bankruptcy Code.

S. The Purchase Agreement and each of the transactions contemplated therein were negotiated, proposed and entered into by the Debtors and the Purchaser in good faith, without collusion and from arm's-length bargaining positions. The Purchaser has proceeded in good faith in all respects in connection with this proceeding, is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. None of the Debtors, the Purchaser nor the Purchaser's present or contemplated owners have engaged in any conduct that (1) would cause or permit the Purchase Agreement or any of the transactions contemplated thereby to be avoided, (2) would tend to hinder, delay or defraud creditors, or (3) impose costs and damages under section 363(n)

of the Bankruptcy Code. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 27, 2009 (Testimony of Robert Manzo); May 28, 2009 Hearing Tr. (Testimony of David Curson); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); Deposition of Matthew Feldman, May 26, 2009, at 37:21-39:1; Deposition Tr. of Ronald Bloom, at 87).

NOTICE OF THE SALE MOTION, AND THE CURE AMOUNTS

T. As evidenced by the affidavits and certificates of service filed with the Court, in light of the exigent circumstances of these cases and the wasting nature of the Debtors' temporarily idled facilities and assets and based upon the representations of counsel at the Sale Hearing and the testimony of the Debtors' claims and noticing agent, the Court finds that: (1) proper, timely, adequate and sufficient notice of the Sale Motion, the Bidding Procedures Order, the Sale Hearing and the UAW Retiree Settlement Agreement has been provided by the Debtors in accordance with the Bidding Procedures Order; (2) such notice, and the form and manner thereof, was good, sufficient, reasonable and appropriate under the exigent circumstances prevailing in these chapter 11 cases; and (3) no other or further notice of the Sale Motion, the Sale Transaction, the Bidding Procedures, the Sale Hearing or the UAW Retiree Settlement Agreement is or shall be required. (See DX 7; May 27, 2009 Hearing Tr. (Testimony of Daniel McElhinney)). In light of the need to grant the relief requested in the Sale Motion on an expedited basis to avoid any erosion in the going concern value of the Purchased Assets, a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including, but not limited to, the following:

(i) counsel to the Official Committees of Unsecured Creditors appointed in these chapter 11 cases under section 1102 of the Bankruptcy Code (the "Creditors Committee");

(ii) the U.S. Treasury, a prepetition lender and the provider of the debtor in possession financing approved by this Court on a final basis on May 20, 2009 (the "DIP Financing Facility")"), outside counsel to the U.S. Treasury and the Acting United States Attorney for the Southern District of New York;

(iii) counsel to EDC, a lender under the DIP Financing Facility;

(iv) counsel to the UAW;

(v) counsel to the Purchaser,

(vi) counsel to the administrative agent and collateral agent for the Debtors' prepetition secured First Lien Lenders (as defined below);

(vii) counsel to Cerberus;

(viii) counsel to Daimler;

(ix) parties who, in the past year, have expressed in writing to the Debtors an interest in acquiring the Purchased Assets;

(x) nondebtor parties (collectively, the "Non-Debtor Counterparties") to the Assumed Agreements;

(xi) all parties who are known or reasonably believed to have asserted a lien, encumbrance, claim or other interest in the Purchased Assets or who are reflected as secured parties in lien searches conducted by the Debtors;

(xii) the Securities and Exchange Commission,

(xiii) the Internal Revenue Service;

(xiv) all applicable state attorneys general, local environmental enforcement agencies and local regulatory authorities;

(xv) all applicable state and local taxing authorities;

(xvi) the Office of the United States Trustee for the Southern District of New York,

(xvii) the Federal Trade Commission;

(xviii) the United States Attorney General/Antitrust Division of Department of Justice;

(xix) the Environmental Protection Agency;

(xx) the United States Attorney;

(xxi) the Pension Benefit Guaranty Corporation;

(xxii) applicable foreign regulatory authorities in non-U.S. countries in which the Debtors do business;

(xxiii) all parties that filed objections to the Sale Motion;

(xxiv) all entities that have requested notice in these chapter 11 cases under Bankruptcy Rule 2002;

(xxv) the Debtors' retirees and surviving spouses represented by the UAW, including the members of the "Class" as defined in the UAW Retiree Settlement Agreement;

(xxvi) all employees of the Debtors;

(xxvii) all dealers with current agreements for the sale or leasing of Chrysler, Jeep or Dodge brand vehicles;

(xxviii) any other party identified on the creditor matrix in these cases.

(See DX 7).

U. Additionally, the Debtors published notice of the Sale Transaction in the national editions of *USA Today*, *The Wall Street Journal* and *The New York Times*, as well as the worldwide edition of *The Financial Times*. (See DX 8). With regard to parties who have claims against the Debtors, but whose identities are not reasonably ascertainable by the Debtors (including, but not limited to, parties with potential contingent warranty claims against the Debtors), the Court finds that such publication notice was sufficient and reasonably calculated under the circumstances to reach such parties.

V. In accordance with the Contract Procedures as set forth in the Bidding Procedures Order, the Debtors have provided notice or shall provide notice (an "Assignment Notice") of their intent to assume and assign the Assumed Agreements and of the related proposed amounts ("Cure Costs") to cure prepetition and postpetition defaults under Assumed Agreements with each such Non-Debtor Counterparty. See Notices of Filing of Schedules of Designated Agreements (DX 16; DX 62; DX 63; Deposition of Scott Garberding, May 24, 2009,

Exhibit 1). The service and provision of the Assignment Notices that were served in accordance with the Bidding Procedures Order, was good, sufficient and appropriate under the circumstances and no further notice need be given with respect to the Cure Costs for the Assumed Agreements described by the Assignment Notices and the assumption and assignment of the Assumed Agreements. (See Affidavits of Service (Docket Nos. 1041, 1996, 1997, 1998, 2003, 2004, 2016, 2017, 2018, 2019, 2020, 2022, 2023, 2025, 2026, 2027, 2028, 2029, 2030, 2081 and 2108). All Non-Debtor Counterparties to the Assumed Agreements have had an opportunity to object to both the Cure Costs listed in the Assignment Notices and the assumption and assignment of the Assumed Agreements (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code). With respect to executory contracts or unexpired leases that are designated by the Debtors as Assumed Agreements pursuant to the Contract Procedures and Section 2.10 of the Purchase Agreement and for which responses to Assignment Notices are due after the entry of this Sale Order, the Contract Procedures provide all Non-Debtor Counterparties to such Assumed Agreements with the opportunity to object to both the Cure Costs identified in any Assignment Notice delivered to any such Non-Debtor Counterparty and the assumption and assignment of the applicable Assumed Agreement (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Non-Debtor Counterparty from accepting performance by, or rendering performance to, the Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code)

SECTION 363(F) REQUIREMENTS MET FOR FREE AND CLEAR SALE

W. The Debtors may sell the Purchased Assets free and clear of all Claims because, in each case where a Claim is not an Assumed Liability, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Except as provided in this Sale Order, the assumption and assignment of each of the Assumed Agreements is also free and clear of all Claims other than the payment of the Cure Costs.

X. The Debtors are the sole and lawful owners of the Purchased Assets and no other person has any ownership right title or interest therein. The Debtors' non-Debtor affiliates have acknowledged and agreed to the sale and, as required by and in accordance with the Transition Services Agreement, transferred any legal, equitable or beneficial right, title or interest they may have in or to the Purchased Assets to the Purchaser. (See DX 64).

Y. The transfer of Purchased Assets constituting "Collateral" as defined under that certain Second Amended and Restated Collateral Trust Agreement (the "CTA"), dated as of January 2, 2009, among, *inter alia*, certain of the Debtors and their subsidiaries, JPMorgan Chase Bank, N.A. as both First Priority Agent ("First Priority Agent") and Second Priority Agent, the U.S. Treasury as Third Priority Agent and Wilmington Trust Company as Collateral Trustee (the "Collateral Trustee") has been consented to for purposes of section 363(f)(2) of the Bankruptcy Code, subject to and in accordance with that certain Consent to Sale and Liquidation of Collateral delivered by the First Priority Agent as "Controlling Party" under the CTA to the Debtors (the "First Priority Consent"), subject to the terms of the First Priority Consent, including, without limitation, to the indefeasible payment by the Purchaser immediately upon the sale of the Purchased Assets of $2 billion in immediately available funds to the First Priority Agent to be applied as set forth in the First Priority Consent. The First Priority Consent binds all

parties holding debt under the First Lien Credit Agreement in their capacity as such (collectively, the "First Lien Lenders"). (See DX 55; DX 57).

Z. In addition, those holders of Claims who did object fall within one or more of the other subsections of sections 363(f) and 365 of the Bankruptcy Code as (1) the consideration received in exchange for the Purchased Assets is greater than the aggregate value of all liens on the Purchased Assets (See May 27, 2009 Hearing Tr. (Testimony of Robert Manzo)), (2) there is a *bona fide* dispute with respect to certain of the Claims asserted (e.g., claims of certain dealers relating to the proposed rejection of their dealership agreements) (See May 28, 2009 Hearing Tr. (Testimony of Peter Grady); May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla)), or (3) such holders could be compelled in a legal or equitable proceeding to accept a money satisfaction of their Claims. The transfer of the Purchased Assets to the Purchaser under the Purchase Agreement will be a legal, valid and effective transfer of all of the legal, equitable and beneficial right, title and interest in and to the Purchased Assets free and clear of all Claims that are not Assumed Liabilities (including, specifically and without limitation, any products liability claims, environmental liabilities, employee benefit plans and any successor liability claims), except as otherwise provided in this Sale Order. All holders of Claims are adequately protected — and the Sale Transaction thus satisfies section 363(e) of the Bankruptcy Code — by having their Claims, if any, attach to the proceeds of the Sale Transaction ultimately attributable to the property against which they have a Claim or other specifically dedicated funds, in the same order of priority and with the same validity, force and effect that such Claim holder had prior to the Sale Transaction, subject to any rights, claims and defenses of the Debtors or their estates, as applicable, or as otherwise provided herein.

AA. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale Transaction, thus adversely affecting the Debtors, their estates, creditors, employees, retirees and other parties in interest if the sale of the Purchased Assets was not free and clear of all Claims other than Assumed Liabilities, or if the Purchaser would, or in the future could, be liable for any such Claims, including, without limitation and as applicable, certain liabilities (collectively, the "Excluded Liabilities") that expressly are not assumed by the Purchaser, as set forth in the Purchase Agreement or in this Sale Order. The Purchaser asserts that it will not consummate the Sale Transaction unless the Purchase Agreement specifically provides and this Court specifically orders that none of the Purchaser, its affiliates, their present or contemplated members or shareholders (other than the Debtors as the holder of equity in Purchaser), or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, (a) any Claim other than (x) an Assumed Liability or (y) a Claim against any "Purchased Company" (as such term is defined in the Purchase Agreement) or (b) any successor liability for any of the Debtors. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla))

BB. Without limiting the generality of the foregoing, the Purchase Agreement provides the Debtors with reasonably equivalent value and fair consideration (as those terms are defined in the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and the Bankruptcy Code), and was not entered into for the purpose or, nor does it have the effect of, hindering, delaying or defrauding creditors of any of the Debtors under any applicable laws. Except for the Assumed Liabilities, the Sale Transaction shall not impose or result in the imposition of any liability or responsibility on Purchaser or its affiliates, successors or assigns or

any of their respective assets (including the Purchased Assets), and the transfer of the Purchased Assets to the Purchaser does not and will not subject the Purchaser or its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), to any liability for any Claims, including, without limitation, for any successor liability or any products liability for the sale of any vehicles by the Debtors or their predecessors or affiliates, except as expressly identified as an Assumed Liability.

ASSUMPTION AND ASSIGNMENT OF THE ASSUMED AGREEMENTS

CC. The assumption and assignment of the Assumed Agreements are integral to the Purchase Agreement, are in the best interests of the Debtors and their estates and represent the reasonable exercise of the Debtors' sound business judgment. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla); May 28, 2009 Hearing Tr. (Testimony of David Curson); May 28, 2009 Hearing Tr. (Testimony of Peter Grady); May 27, 2009 Hearing Tr. (Testimony of Thomas Lasorda); May 28, 2009 Hearing Tr. (Testimony of Robert Nardelli); May 28, 2009 Hearing Tr. (Testimony of James Chapman)).

DD. With respect to each of the Assumed Agreements, the Debtors have met all requirements of section 365(b) of the Bankruptcy Code. Further, the Purchaser has provided all necessary adequate assurance of future performance under the Assumed Agreements in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code. (See May 27, 2009 Hearing Tr. (Testimony of Alfredo Altavilla)). Accordingly, the Assumed Agreements can be assumed by the Debtors and assigned to the Purchaser, as provided for in the Contract Procedures set forth in the Bidding Procedures Order, the Sale Motion and the Purchase Agreement. The Contract Procedures are fair, appropriate and effective and, upon the payment by the Purchaser of all Cure Costs (which costs are the sole obligation of the Purchaser under the Purchase Agreement) and the payment of such other obligations assumed pursuant to this Sale Order and approval of the

assumption and assignment for a particular Assumed Agreement thereunder, the Debtors shall be forever released from any and all liability under the Assumed Agreement.

EE. The Purchaser has acknowledged that it will be required to comply with the National Traffic and Motor Vehicle Safety Act, as amended and recodified ("NTMVSA"), as applicable to the business of the Purchaser after the Closing Date. In addition, the Purchaser has agreed to assume as Assumed Liabilities under the Purchase Agreement and this Sale Order the Debtors' notification, remedy and other obligations under 49 U.S.C. §§ 30116 through 30120 of the NTMVSA relating to vehicles manufactured by the Debtors prior to the Closing Date that have a defect related to motor vehicle safety or do not to comply with applicable motor vehicle safety standards prescribed under the NTMVSA. The Purchaser shall not otherwise be liable for any failure by the Debtors to comply with the provisions of the NTMVSA.

FF. For the avoidance of doubt, and notwithstanding anything else in this Sale Order to the contrary:

- the Debtors are neither assuming nor assigning to the Purchaser the settlement agreement (the "2008 Settlement Agreement") between the Debtors, the UAW and certain of the Debtors' retirees, dated March 31, 2008, which was approved by the United States District Court for the Eastern District of Michigan on July 31, 2008, in the class action of *Int'l Union, UAW, et al. v. Chrysler, LLC*, Case No. 07-CV-14310 (E.D. Mich. filed Oct. 11, 2007) and established, among other things, an independent Voluntary Employee Beneficiary Association (the "VEBA") that would become responsible for retiree health care on behalf of current and future UAW retirees of the Debtors and their surviving spouses and eligible dependents (the "*English* Case VEBA") (DX 4, May 28, 2009 Hearing Tr. (Testimony of David Curson));

- the 2007 Chrysler-UAW National Agreement, including (1) the Production, Maintenance and Parts National Agreement, (2) the Engineering Office & Clerical National Agreement, (3) the Toledo Assembly Plant/Jeep Unit, Local 12 Agreement, (4) Daimler Chrysler Financial Services North America, LLC (Farmington) and (5) Daimler Chrysler Financial Services North America, LLC (Detroit), and all appendices, memoranda of understanding, supplemental agreements, local agreements and benefit plans, as modified effective April 30, 2009 (the "UAW CBA"), shall be assumed by the Debtors and assigned to the Purchaser pursuant to this Sale Order and section 365 of the Bankruptcy

Code. Assumption and assignment of the UAW CBA is integral to the Sale Transaction and the Purchase Agreement, is in the best interests of the Debtors and their estates, creditors, employees and retirees and represent the reasonable exercise of the Debtors' sound business judgment (See May 28, 2009 Hearing Tr. (Testimony of David Curson));

- the UAW, as the exclusive collective bargaining representative of employees of the Purchaser and the "authorized representative" of UAW-represented retirees of the Debtors under section 1114(c) of the Bankruptcy Code, and the Purchaser engaged in good faith negotiations in conjunction with the Sale Transaction regarding the funding of retiree health benefits within the meaning of section 1114(a) of the Bankruptcy Code. Conditioned upon the consummation of the Sale Transaction and the assumption and assignment of the UAW CBA, the UAW and the Purchaser have entered into a Retiree Settlement Agreement (the "UAW Retiree Settlement Agreement"), which, among other things, provides for the financing by the Purchaser of modified retiree health care obligations for the Class and Covered Group (as defined in the UAW Retiree Settlement Agreement) through contributions by the Purchaser to the *English* Case VEBA. The Debtors, the Purchaser and the UAW specifically intend that their actions in connection with the UAW Retiree Settlement Agreement and related undertakings incorporate the compromise of certain claims and rights and shall be deemed to satisfy the requirements of 29 U.S.C. § 186(c)(2) (See DX 4; May 28, 2009 Hearing Tr. (Testimony of David Curson)); and

- the Debtors' sponsorship of the Internal Existing VEBA (as defined in the UAW Retiree Settlement Agreement) shall be transferred to the Purchaser under the Purchase Agreement (See DX 64, at § 6.08).

VALIDITY OF THE TRANSFER

GG. As of the closing of the Sale Transaction (the "Closing"), the transfer of the Purchased Assets to the Purchaser will be a legal, valid and effective transfer of the Purchased Assets, and will vest the Purchaser with all right, title and interest of the Debtors in and to the Purchased Assets, free and clear of all Claims other than Assumed Liabilities.

HH. With the entry of this Sale Order, the Debtors (1) have full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtors; (2) have all of the corporate power and authority necessary to consummate the transactions contemplated by the Purchase Agreement; (3) have taken all actions necessary to

authorize and approve the Purchase Agreement and the consummation by the Debtors of the transactions contemplated thereby, and (4) upon entry of this Sale Order, need no consents or approvals, other than those expressly provided for in the Purchase Agreement, which may be waived by the Purchaser, to consummate such transactions. (See DX 38; DX 64 at Art. IV-A).

II. To the extent that the right, title and interest of the Debtors in and to any of the Purchased Assets ultimately is transferred to the Purchaser after the Closing pursuant to a plan of reorganization confirmed in these chapter 11 cases, such transfer shall be deemed a transfer pursuant to section 1146 of the Bankruptcy Code and shall not be taxed under any law imposing a stamp, transfer or any other similar tax.

PERSONALLY IDENTIFIABLE INFORMATION

JJ. The Debtors currently maintain certain privacy policies that govern the use of "personally identifiable information" (as such term is defined by section 101(41A) of the Bankruptcy Code) in the operation of their businesses. The Debtors propose to sell certain assets containing personally identifiable information in a manner that is not in compliance with their current existing privacy policies. As such, in the Bidding Procedures Order, the Court directed the U.S. Trustee to promptly appoint a consumer privacy ombudsman in accordance with section 332 of the Bankruptcy Code, and Alan Chapell, CIPP (the "Privacy Ombudsman") was appointed as a consumer privacy ombudsman under section 332 of the Bankruptcy Code on May 11, 2009 (Docket No. 594). The Privacy Ombudsman is a disinterested person as required by section 332(a) of the Bankruptcy Code. The Privacy Ombudsman filed his report with the Court on May 28, 2009 (Docket No. 2790) (the "Ombudsman Report") and presented his report at the Sale Hearing, and the Ombudsman Report has been reviewed and considered by the Court. The Court has given due consideration to the (1) facts, (2) exigent circumstances surrounding and (3) the conditions of the sale of personally identifiable information in connection with the

Sale Transaction, including as set forth in the Ombudsman Report. No showing has been made that the sale of personally identifiable information in connection with the Sale Transaction violates applicable non-bankruptcy law, and the Court concludes that such sale is appropriate in conjunction with the Sale Transaction.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

GENERAL PROVISIONS

1. The Sale Motion is granted in its entirety and entry into and performance under and in respect of the Purchase Agreement and the Sale Transaction is approved, as set forth in this Sale Order.

2. The findings of fact and conclusions of law set forth in the Court's Opinion, dated May 31, 2009 (Docket No. 3073), as supplemented by the findings of fact stated above and conclusions of law stated herein shall constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

3. All objections, if any, to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice, except as expressly provided herein. Attached hereto as Exhibit B is a summary schedule of filed objections and the treatment of each.

APPROVAL OF THE PURCHASE AGREEMENT

4. The Purchase Agreement, all transactions contemplated therein and all of the terms and conditions thereof are hereby approved, subject to the terms and conditions of this Sale Order to the extent of any express conflict herewith. In the event of any direct conflict between the terms and conditions of the Purchase Agreement and those of this Sale Order as in effect at the Closing Date, the terms and conditions of this Sale Order shall govern, provided that no change to this Sale Order made after the Closing Date without the consent of the Purchaser shall affect the rights or obligations of the Purchaser arising out of or relating to the Purchase Agreement in any manner.

5. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Debtors are authorized and directed to perform their obligations under and comply with the terms of the Purchase Agreement and consummate the Sale Transaction, pursuant to and in accordance with the terms and conditions of the Purchase Agreement and this Sale Order

6. The Debtors, as well as their affiliates, officers, employees and agents, are authorized and directed to execute and deliver, and empowered to perform under, consummate and implement, the Purchase Agreement, in substantially the same form as the Purchase Agreement attached hereto as Exhibit A, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and to take all further actions and execute such other documents as may be (a) reasonably requested by the Purchaser for the purpose of assigning, transferring, granting, conveying and conferring to the Purchaser, or reducing to possession, the Purchased Assets (including, but not limited to, all necessary transition services to be provided to the Purchaser by the Debtors), (b) necessary or appropriate to the performance of the obligations contemplated by the Purchase Agreement and (c) as may be reasonably requested by Purchaser to implement the Purchase Agreement and

consummate the Sale Transaction in accordance with the terms thereof, all without further order of the Court.

7. This Sale Order and the Purchase Agreement shall be binding in all respects upon the Purchaser, the Debtors, their affiliates, any trustees appointed in the Debtors' cases (whether under chapter 11 or chapter 7 of the Bankruptcy Code), all creditors (whether known or unknown) of any Debtors, all interested parties and their successors and assigns, including, but not limited to, any party asserting a Claim and any Non-Debtor Counterparty to the Assumed Agreements. Nothing contained in any chapter 11 plan confirmed in these bankruptcy cases or the order confirming any such chapter 11 plan shall conflict with or derogate from the provisions of the Purchase Agreement or this Sale Order, and to the extent of any conflict or derogation between this Sale Order or the Purchase Agreement and such future plan or order, the terms of this Sale Order and the Purchase Agreement shall control to the extent of such conflict or derogation.

8. All amounts, if any, to be paid by Debtors' pursuant to the Purchase Agreement shall constitute administrative expenses pursuant to sections 503(b) and 507(a)(1) of the Bankruptcy Code and shall be due and payable if and when any Debtors' obligations arise under the Purchase Agreement without further order of the Court.

TRANSFER OF PURCHASED ASSETS FREE AND CLEAR

9. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Debtors are authorized and directed to transfer the Purchased Assets in accordance with the terms of the Purchase Agreement. The Purchased Assets shall be transferred to the Purchaser, and upon consummation of the Purchase Agreement, such transfer (a) shall be a valid, legal, binding and effective transfer, (b) shall vest the Purchaser with all right, title and interest of the Debtors in the Purchased Assets, and (c) shall be free and clear of all Claims except for

Assumed Liabilities with all such Claims to attach to the proceeds of the Sale Transaction ultimately attributable to the Purchased Assets against or in which such Claims are asserted, or other specifically dedicated funds, in the order of their priority, with the same validity, force and effect which they now have as against the Purchased Assets, subject to any rights, claims and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

10. In connection with the transfer of the Purchased Assets to the Purchaser (a) the Debtors are authorized and directed to execute, deliver and perform their obligations under the First Priority Consent, including by indefeasibly paying, or causing the indefeasible payment of, immediately upon consummation of such transfer of the Purchased Assets, $2 billion in immediately available funds to the First Priority Agent to be applied as set forth in the First Priority Consent, and (b) Wilmington Trust Company as Collateral Trustee under the CTA is authorized and directed to comply with the Direction Letter dated as of May 27, 2009 delivered to it by the First Priority Agent as "Controlling Party" under the CTA, including by executing and delivering such documents as are necessary to permit the transfer of the Purchased Assets free and clear of liens on the Purchased Assets held by Wilmington Trust Company as Collateral Trustee under the CTA.

11. Notwithstanding paragraph 15 below or anything to the contrary in this Sale Order or the Purchase Agreement, (a) any Purchased Asset that is subject to any mechanics', carriers', workers', repairers', shippers', marine cargo, construction, toolers', molders' or similar lien or any statutory lien on real and personal property for property taxes not yet due shall continue to be subject to such lien after the Closing Date if and to the extent that such lien (i) is valid, perfected and enforceable as of the Petition Date (or becomes valid, perfected and enforceable after the Petition Date as permitted by section 546(b) or 362(b)(18) of the

Bankruptcy Code), (ii) could not be avoided by any Debtor under sections 544 to 549, inclusive, of the Bankruptcy Code or otherwise, were the Closing not to occur; and (iii) the Purchased Asset subject to such lien could not be sold free and clear of such lien under applicable non-bankruptcy law, and (b) any Liability as of the Closing Date that is secured by a lien described in clause (a) above (such lien, a "Continuing Lien") that is not otherwise an Assumed Liability shall constitute an Assumed Liability with respect to which there shall be no recourse to the Purchaser or any property of the Purchaser other than recourse to the property subject to such Continuing Lien. The Purchased Assets are sold free and clear of any reclamation rights; *provided, however*, that nothing, in this Sale Order or the Purchase Agreement shall in any way impair the right of any claimant against the Debtors with respect to any alleged reclamation right to the extent such reclamation right is not subject to the prior rights of a holder of a security interest in the goods or proceeds with respect to which such reclamation right is alleged, or impair the ability of a claimant to seek adequate protection against the Debtors with respect to any such alleged reclamation right. Further, nothing in this Sale Order or the Purchase Agreement shall prejudice any rights, defenses, objections or counterclaims that the Debtors, the Purchaser, the U.S. Treasury, EDC, the Creditors' Committee or any other party in interest may have with respect to the validity or priority of such asserted liens or rights, or the type (or amount), if any, of required adequate protection.

12. Except as otherwise provided in the Purchase Agreement, all persons and entities (and their respective successors and assigns), including, but not limited to, all debt security holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, dealers, employees, trade creditors, litigation claimants and other creditors, holding Claims (whether legal or equitable, secured or unsecured, known or unknown, matured

or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated) except for Assumed Liabilities or Claims against any Purchased Company, arising under or out of, in connection with, or in any way relating to, the Debtors, the Purchased Assets, the operation of the Business prior to Closing or the transfer of the Purchased Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting such Claims against the Purchaser, its successors or assigns, its property or the Purchased Assets. No such persons or entities shall assert against the Purchaser or their successors in interest any Claim arising from, related to or in connection with the ownership, sale or operation of any Asset prior to the Closing, except for Assumed Liabilities.

13. This Sale Order (a) shall be effective as a determination that, as of the Closing, (i) no Claims other than (x) Assumed Liabilities relating to the Purchased Assets or (y) Claims against any Purchased Company, will be assertable against the Purchaser, its affiliates, successors or assigns or any of their respective assets (including the Purchased Assets), (ii) the Purchased Assets shall have been transferred to the Purchaser free and clear of all Claims and (iii) the conveyances described herein have been effected, and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and

instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

14. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Claims against or in the Debtors or the Purchased Assets shall not have delivered to the Debtors prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all interests that the person or entity has with respect to the Debtors or the Purchased Assets or otherwise, then only with regard to Purchased Assets that are purchased by the Purchaser pursuant to the Purchase Agreement and this Sale Order (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets; and (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the applicable Purchased Assets other than the Assumed Liabilities. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office.

15. All persons or entities in possession of some or all of the Purchased Assets are directed to surrender possession of such Purchased Assets to the Purchaser or its respective designees at the time of the Closing of the Sale Transaction.

16. Following the Closing of the Sale Transaction, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based

on or related to any such Claim, or based on any actions the Debtors may take in their chapter 11 cases.

17. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the Purchase Agreement and this Sale Order.

18. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale Transaction contemplated by the Purchase Agreement.

19. Notwithstanding anything else contained herein or in the Purchase Agreement, in connection with the purchase of the Debtors' brands and related Purchased Assets, the Purchaser, from and after the Closing, will recognize, honor and pay liabilities under Lemon Laws for additional repairs, refunds, partial refunds (monetary damages) or replacement of a defective vehicle (including reasonable attorneys' fees, if any, required to be paid under such Lemon Laws and necessarily incurred in obtaining those remedies), and for any regulatory obligations under such Lemon Laws arising now, including but not limited to cases resolved prepetition or in the future, on vehicles manufactured by the Debtors in the five years prior to the Closing (without extending any statute of limitations provided under such Lemon Laws), but in any event not including punitive, exemplary, special, consequential or multiple damages or penalties and not including any claims for personal injury or other consequential damages that may be asserted in relationship to such vehicles under the Lemon Laws. As used herein, "Lemon Law" means a federal or state statute, including, but not limited to, claims under the Magnuson-

Moss Warranty Act based on or in conjunction with a state breach of warranty claim, requiring a manufacturer to provide a consumer remedy when the manufacturer is unable to conform the vehicle to the warranty after a reasonable number of attempts as defined in the applicable statute. In connection with the foregoing, the Purchaser has agreed to continue addressing Lemon Law claims (to the extent that they are Assumed Liabilities) using the same or substantially similar procedural mechanisms previously utilized by the Debtors.

20. The Purchased Owned Real Property and PP&E (as such terms are defined in the Purchase Agreement) that, as of the Closing, are subject to existing statutory liens or any liens that may be created or perfected in accordance with section 362(b)(18) of the Bankruptcy Code shall be transferred to the Purchaser subject to (a) any applicable property taxes for the tax year 2009 (collectively, the "2009 Property Taxes") owed to state and local taxing authorities in the United States (collectively, the "Relevant Taxing Authorities") and (b) any liens related to such 2009 Property Taxes. The 2009 Property Taxes shall be paid by the Purchaser, however, as between the Purchaser and the Debtors such 2009 Property Taxes shall be prorated as of the Closing Date and settled upon receipt of the relevant property tax bills. The Relevant Taxing Authorities shall bill their 2009 Property Taxes to the Purchaser in the ordinary course, not as an expedited or jeopardy assessment.

21. The Debtors shall deposit designated funds in the amount of $63 million in a dedicated escrow account (the "Tax Escrow") to satisfy sales and use taxes, Michigan business taxes and other taxes owed to the Relevant Taxing Authorities in respect of any of the Debtors (including predecessors of the Debtors) and not covered by paragraph 20 above, to the extent such taxes are (a) secured taxes or may become secured by liens that may be created or perfected in accordance with section 362(b)(18) of the Bankruptcy Code or (b) of the nature authorized to

be paid under the Order, Pursuant to Sections 105(a), 363(b), 507(a) and 541 of the Bankruptcy Code, Authorizing the Debtors and Debtors in Possession to Pay Certain Prepetition Taxes (Docket No. 355) to the extent such taxes were or may be asserted or assessed against individuals (collectively, the "Additional Taxes"). Any Claims for Additional Taxes shall attach to, and be satisfied from, the Tax Escrow.

22. (a) Notwithstanding any contrary provision of this Sale Order or the Purchase Agreement, the 61 Vehicles, as described and defined in the response of Wilmington Trust Company to the Sale Motion (Docket No. 1188), will be treated as Excluded Assets that will not be transferred to the Purchaser

(b) Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, the Debtors' assumption and assignment to the Purchaser of all of the Debtors' right, title and interest in or under the Debtors' guaranteed depreciation program agreement and ancillary agreements related thereto (collectively, the "GDP Agreement") with Dollar Thrifty Automotive Group, Inc. and its affiliates (collectively, "DTAG") are hereby approved, and all requirements of section 365 of the Bankruptcy Code are hereby deemed satisfied as of the date of, and effective only upon, the Closing of the Sale Transaction. DTAG has consented to such assumption and assignment and agrees that, subject to payment of Cure Costs, such assumption and assignment shall not constitute an event of default thereunder or permit the termination thereof. The Debtors and DTAG shall confer in good faith to determine the amount of the Cure Costs to be paid under the GDP Agreement. If the Debtors and DTAG are unable to reach a resolution of such cure cost amount, either of such parties may apply to the Court for an order, upon notice and a hearing, determining the correct Cure Cost amount.

(c) All obligations of Chrysler LLC under the GMAC MAFA Term Sheet (the "GMAC Term Sheet") attached to the Purchase Agreement as Exhibit A, or if executed, the definitive GMAC Master Autofinance Agreement, which agreement shall be substantially on the same terms as the GMAC Term Sheet or the Annexes thereto, as well as any intellectual property licensing agreements entered into connection therewith and all the other agreements that are specified in the GMAC Term Sheet, including, without limitation, one or more repurchase agreements with substantially the same terms as set forth in Annex D to Exhibit A of the Purchase Agreement (collectively with the GMAC Term Sheet, the "GMAC MAFA Documents") shall be assigned by the Debtors to the Purchaser, and the Purchaser shall be deemed to have assumed the GMAC MAFA Documents, pursuant to this Sale Order and the Bidding Procedures Order, and each non-Debtor party to the GMAC MAFA Documents shall be deemed to have consented to such assumption and assignment. Assumption and assignment of the GMAC MAFA Documents are integral to the Sale Transaction and the Purchase Agreement, are in the best interests of the Debtors and their estates, creditors, employees and retirees and represent the reasonable exercise of the Debtors' sound business judgment.

(d) At the Purchaser's written election, to be made by notice to Chrysler Financial Services Americas LLC ("Chrysler Financial") no later than June 12, 2009, or such other date as the Purchaser and Chrysler Financial may agree, either (i) (A) the vehicles related to unperformed or partially unperformed repurchase obligations arising from or related to agreements between the Debtors and dealers whose dealerships were terminated prepetition, or arising from or related to prepetition agreements between Chrysler Financial and the Debtors (collectively, the "Repurchased Vehicles"), and (B) the vehicles commonly referred to by Chrysler Financial and the Debtors as "conversion vehicles" that are currently in the possession

of entities that convert such vehicles into "conversion vehicles" (together with Repurchased Vehicles, the "Conversion and Repurchased Vehicles"), will be treated as "Excluded Assets" that will not be transferred to the Purchaser, or (ii) will be treated as Purchased Assets and the alleged liens in favor of Chrysler Financial or its affiliates on the Conversion and Repurchased Vehicles will be Continuing Liens to the extent they meet the requirements of subparagraphs 11(a)(i) through (iii) above.

(e) Chrysler Financial and its affiliates object to the sale to the Purchaser of any insurance policy, surety bond or related indemnity arrangement to the extent that it (i) is an executory contract to extend a financial accommodation or a personal services contract and therefore not assumable and assignable to the Purchaser pursuant to section 365(c)(1) or (c)(2) of the Bankruptcy Code or (ii) is property the sale of which is not permitted under state or contract law and that entitles Chrysler Financial and its affiliates to adequate protection pursuant to section 363(e) of the Bankruptcy Code or that may not be sold free and clear of the interests of Chrysler Financial and its affiliates pursuant to section 363(f) of the Bankruptcy Code. The parties reserve all rights (including, without limitation, any rights under the Contract Procedures and, in the case of the Purchaser, any rights against the Debtors pursuant to Sections 2.11 and 2.12 of the Purchase Agreement) and agree that no such policy, bond or arrangement shall be deemed to be transferred to Purchaser and that no liens, rights of setoff, equitable subrogation or equitable lien arising in favor of Chrysler Insurance Company, as insurer or surety, as against any Debtor's estate shall be terminated, diminished or affected by reason of any provision of the Purchase Agreement or this Sale Order until such objections are resolved by the Court.

23. Nothing in this Sale Order or in the Purchase Agreement releases, nullifies or enjoins the enforcement of any liability to a governmental unit under police and regulatory statutes or regulations that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order.

APPROVAL OF UAW RETIREE SETTLEMENT AGREEMENT

24. The UAW Retiree Settlement Agreement, all transactions contemplated therein and all of the terms and conditions thereof are fair, reasonable and in the best interests of the retirees and are hereby approved. The Debtors, the Purchaser and the UAW are authorized to perform their obligations under, or in connection with, the implementation of the UAW Retiree Settlement Agreement and comply with the terms of the UAW Retiree Settlement Agreement pursuant to and in accordance with the terms and conditions of the UAW Retiree Settlement Agreement and this Sale Order. The Trust Amendments are hereby approved and the *English Case* VEBA Trust Agreement is reformed accordingly (as such terms are defined in the UAW Retiree Settlement Agreement).

ASSUMPTION AND ASSIGNMENT OF ASSUMED AGREEMENTS

25. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, and in accordance with the Contract Procedures, the Debtors' assumption and assignment or other transfer to the Purchaser of all of the Debtors' right, title and interest in or under the Assumed Agreements are hereby approved, with only such exceptions as Purchaser may agree in writing, and all requirements of section 365 of the Bankruptcy Code are hereby deemed satisfied. For the avoidance of doubt, subject to the Contract Procedures (including the resolution of any Section 365 Objection and the issuance of a Confirmation Notice, as set forth in the Bidding Procedures Order), the Debtors shall be deemed to have assumed and assigned each of the Assumed Agreements as of the date of and effective only upon the Closing of the Sale Transaction and,

absent such Closing, each of the Assumed Agreements shall neither be deemed assumed nor assigned and shall in all respects be subject to subsequent assumption or rejection by the Debtors under the Bankruptcy Code.

26. Except as provided herein, the Debtors are hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code and the Contract Procedures to assume and assign, sell and otherwise transfer the Assumed Agreements of all of the Debtors' right, title or interest therein or thereunder to the Purchaser free and clear of all Claims, and to execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Assumed Agreements to the Purchasers.

27. In accordance with the Contract Procedures, the Assumed Agreements shall be transferred to, and remain in full force and effect for the benefit of, the Purchaser in accordance with their respective terms, notwithstanding any provision in any such Assumed Agreement (including those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts or conditions such assignment or transfer. There shall be no rent accelerations, assignment fees, penalties, increases or any other fees charged to the Purchaser or the Debtors as a result of the assumption or assignment of the Assumed Agreements. No Assumed Agreement may be terminated, or the rights of any party modified in any respect, including pursuant to any "change of control" clause, by any other party thereto as a result of the transactions contemplated by the Purchase Agreement.

28. To the extent that the Purchaser exercises its right to exclude any Assumed Agreement from the Sale Transaction prior to the applicable Agreement Assumption Date, such Assumed Agreement shall (a) be deemed never to have been assumed by the Debtors or assigned

to the Purchaser and (b) remain subject to assumption, rejection or assignment by the Debtors at any time in the future.

29. Except as may be otherwise agreed to by the parties to an Assumed Agreement, the Cure Costs under the Assumed Agreements shall be paid by the Purchaser as soon as practicable and in no event later than ten days after the later of (a) the Closing of the Sale Transaction or (b) following the date on which such Assumed Agreement is deemed assumed and assigned in accordance with the Contract Procedures. With respect to Disputed Cure Costs, the Purchaser shall reserve sufficient funds to pay the full amount of any Disputed Cure Costs related to the Sale Transaction until such time as there is a resolution among the parties or a final order of this Court determining the correct Cure Costs. In addition to the Cure Costs (but without duplication), the Purchaser will assume and pay, in the ordinary course of business and as they come due, all amounts for goods delivered and services provided prepetition for which payment was not due as of the Petition Date and for postpetition goods delivered and services provided to the Debtors under each Assumed Agreement to the extent due and payable and not otherwise paid by the Debtors.

30. Payment of the Cure Costs shall be a full satisfaction of any and all defaults under the Assumed Agreements, whether monetary or non-monetary, and upon payment of the Cure Costs any default of the Debtors thereunder shall have been irrevocably cured. Upon the assumption and assignment of an Assumed Agreement under the Contract Procedures, the Debtors shall be released from any liability whatsoever arising under the Assumed Agreements and the Cure Costs and ongoing obligations under the Assumed Agreement shall be solely the obligation of the Purchaser. Except as otherwise provided in this Sale Order, each Non-Debtor Counterparty to an Assumed Agreement hereby is forever barred, estopped and

permanently enjoined from asserting against the Debtors or the Purchaser, their successors or assigns or the property of any of them, any default existing as of the date of the assumption of the Assumed Agreement.

31. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assumed Agreement shall not be a waiver of such terms or conditions, or of the Debtors' and the Purchaser's rights to enforce every term and condition of the Assumed Agreements.

32. Upon the Agreement Assumption Date (or such earlier date as set forth in the Contract Procedures), the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assumed Agreements.

33. The assignments of each of the Assumed Agreements are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

34. In connection with the foregoing and consistent with the Contract Procedures, the Purchaser and the Creditors' Committee have agreed to the following: (a) no later than the second calendar day after the initial Section 365 Objection Deadline, the Purchaser will serve Confirmation Notices on the applicable Non-Debtor Counterparties; (b) no later than the second calendar day after the initial Section 365 Hearing, the Purchaser will serve additional Confirmation Notices on the applicable Non-Debtor Counterparties; (c) the Purchaser and the Creditors' Committee acknowledge that, if the Closing occurs prior to June 12, 2009, the terms of the Contract Procedures provide that the Assurance Letter procedure will not apply; and (d) paragraph 20 of the Bidding Procedures Order is clarified to provide that all Designated Agreements (rather than all contracts) that have not become Confirmed Contracts as of the Closing Date shall constitute "Excluded Contracts" for purposes of the Purchase Agreement.

(without any requirement to update the Company Disclosure Letter) unless such Designated Agreements subsequently become Confirmed Contracts in accordance with the Contract Procedures. The failure of the Purchaser to deliver a Confirmation Notice with respect to any Non-Debtor Counterparty as contemplated in clause (a) and (b) of this paragraph 34, whether because the parties have not agreed to Cure Costs or otherwise, shall not preclude the ability of the Purchaser to deliver a Confirmation Notice to such Non-Debtor Counterparty after such time and prior to the "Final Designation Date" (as defined in the Bidding Procedures Order).

ADDITIONAL PROVISIONS

35. Except for the Assumed Liabilities expressly set forth in the Purchase Agreement or described therein or Claims against any Purchased Company, none of the Purchaser, its successors or assigns or any of their respective affiliates shall have any liability for any Claim that (a) arose prior to the Closing Date, (b) relates to the production of vehicles prior to the Closing Date or (c) otherwise is assertable against the Debtors or is related to the Purchased Assets prior to the Closing Date. The Purchaser shall not be deemed, as a result of any action taken in connection with the Purchase Agreement or any of the transactions or documents ancillary thereto or contemplated thereby or the acquisition of the Purchased Assets, to: (a) be a legal successor, or otherwise be deemed a successor to the Debtors (other than with respect to any obligations arising under the Assumed Agreements from and after the Closing), (b) have, *de facto* or otherwise, merged with or into the Debtors; or (c) be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Purchaser shall not have any successor, derivative or vicarious liabilities of any kind or character for any Claims, including, but not limited to, on any theory of successor or transferee liability, *de facto* merger or continuity, environmental, labor and employment,

products or antitrust liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.

36. The Purchaser (or its designee) is authorized and directed, in accordance with Section 5.20 of the Purchase Agreement, to substitute, backstop or replace, as the case may be, in a manner reasonably satisfactory to the Debtors, those letters of credit existing as of the Closing that secure future obligations of the Purchaser under an Assumed Agreement and are identified in writing by the Debtors as part of the Cure Costs. The Purchaser shall cause the originals of any such substituted or replaced letters of credit to be returned to the Debtors or the issuer thereof with no further drawings made thereunder.

37. The Purchaser is hereby granted a first priority lien and super-priority administrative claim over the proceeds of any tax refunds (including interest thereon), returns of withholding taxes or similar payments, and any proceeds of tax sharing, contribution or similar agreements (in each case, other than on refunds due to be paid to third parties pursuant to the Original Contribution Agreement, as defined in the Purchase Agreement) to secure the payment of all amounts due to the Purchaser from any of the Debtors under the tax indemnities in Article 9 of the Purchase Agreement.

38. Effective upon the Closing and except as otherwise set forth herein or provided by stipulations filed with or announced to the Court with respect to a specific matter, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Purchased Assets, with respect to any (a) Claim other than (i) Assumed Liabilities or (ii) Claims against any Purchased Company or (b) successor liability of the Purchaser for any of the Debtors, including,

without limitation, the following actions with respect to clauses (a) and (b): (i) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Purchaser, or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (ii) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order against the Debtors as against the Purchaser or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (iii) creating, perfecting or enforcing any lien, claim, interest or encumbrance against the Debtors as against the Purchaser or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (iv) asserting any setoff, right of subrogation or recoupment of any kind (in the case of recoupment only, except as a defense for payment of an obligation other than an Assumed Agreement) for any obligation of any of the Debtors as against any obligation due the Purchaser or its successors, assigns, affiliates or their respective assets, including the Purchased Assets; (v) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof; or (vi) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with such assets.

39 Except for the applicable Assumed Liabilities, the Purchaser shall not have any liability or other obligation of the Debtors or their affiliates arising under or related to the Purchased Assets. Without limiting the generality of the foregoing, and except as otherwise specifically provided herein or in the Purchase Agreement, the Purchaser shall not be liable for any claims against the Debtors or any of their predecessors or affiliates, and the Purchaser shall have no successor or vicarious liabilities of any kind or character, including, but not limited to,

any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger or substantial continuity, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Debtors or their affiliates or any obligations of the Debtors or their affiliates arising prior to the Closing, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing of the Sale Transaction.

40. Upon the Debtors' assignment of the Assumed Agreements to the Purchaser under the provisions of this Sale Order and any additional order contemplated by the Purchase Agreement, no default shall exist under any Assumed Agreement, and no counterparty to any Assumed Agreement shall be permitted to declare a default by the Purchaser under such Assumed Agreement or otherwise take action against the Purchaser as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the relevant Assumed Agreement.

41. For the avoidance of doubt:

(a) with respect to each Excluded Contract, the Purchaser is not acquiring any right, title or interest in, to and under such Excluded Contract, including without limitation any claim, cause of action, right of recoupment or receivable (whether for money or property), and all rights of a Non-Debtor Counterparty against the Debtors arising under such Excluded Contract, including rights of setoff, are not modified or waived;

(b) with respect to each Assumed Agreement, nothing in this Sale Order or the Purchase Agreement affects the contractual rights and remedies of a Non-Debtor Counterparty under such Assumed Agreement, including, without limitation, any right of setoff, recoupment, subrogation, indemnity rights and any defenses to performance, except to the extent such contractual rights and remedies result from the financial condition or bankruptcy of a Debtor or arise out of or relate to a default or failure to perform under such Assumed Agreement at or prior to the time of assumption and assignment.

(c) with respect to Purchased Assets (whether Assumed Agreements or other Purchased Assets such as Claims and receivables), nothing in this Sale Order or the Purchase Agreement affects any other defense or right of the non-Debtor obligor under applicable law, *provided that* a non-Debtor obligor may not assert any setoff, recoupment or other right or defense to the extent (a) resulting from the financial condition or bankruptcy of a Debtor or arising out of or relating to a default or failure to perform under such Assumed Agreement at or prior to the time of assumption and assignment or (b) arising out of or relating to an Excluded Liability; and

(d) with respect to leases, nothing in this Sale Order or the Purchase Agreement shall (a) affect the rights of any lessor of property leased by a Debtor under an unexpired lease except to the extent such unexpired lease becomes an Assumed Agreement in accordance with the Contract Procedures and applicable law, (b) sell to the Purchaser any leased property not owned by a Debtor or (c) with respect to leases that are Excluded Contracts, affect possessory or ownership rights as against any Debtor or the Purchaser

42. The Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of Claims. The discrete consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of any Claims of any kind whatsoever

43. While the Debtors' bankruptcy cases are pending, this Court shall retain jurisdiction to, among other things, interpret, enforce and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, any waivers and consents thereunder (and of each of the agreements executed in connection therewith in all respects), to adjudicate disputes related to this Sale Order or the Purchase Agreement and to enter any orders under sections 105, 363 and/or 365 (or other relevant provisions) of the Bankruptcy Code with respect to the Assumed Agreements

44. Nothing in this Sale Order or the Purchase Agreement releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental statutes or

regulations (or any associated liabilities for penalties, damages, cost recovery or injunctive relief) that any entity would be subject to as the owner or operator of property after the date of entry of this Sale Order. Notwithstanding the foregoing sentence, nothing in this Sale Order shall be interpreted to deem the Purchaser as the successor to the Debtors under any state law successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to entry of this Sale Order or for liabilities relating to off-site disposal of wastes by the Debtors prior to entry of this Sale Order. Nothing in this paragraph should be construed to create for any governmental unit any substantive right that does not already exist under law.

45. No bulk sales law, or similar law of any state or other jurisdiction shall apply in any way to the transactions contemplated by the Purchase Agreement, the Sale Motion and this Sale Order.

46. The transactions contemplated by the Purchase Agreement are undertaken by the Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction (including the assumption and assignment of the Assumed Agreements), unless such authorization is duly stayed pending such appeal.

47. The consideration provided by the Purchaser for the Purchased Assets constitutes reasonably equivalent value and fair consideration (as those terms may be defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act and section 548 of the Bankruptcy Code) under the Bankruptcy Code and under the laws of the

United States, any state, territory or possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

48. The Sale Transaction may not be avoided under section 365(n) of the Bankruptcy Code.

49. The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors, their estates, their creditors, the Purchaser, the respective affiliates, successors and assigns of each, and any affected third parties, including, but not limited to, all persons asserting claims in the Purchased Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee(s), examiner(s) or receiver(s) under any chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee(s), examiner(s) or receiver(s) and shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, their shareholders or any trustee(s), examiner(s), or receiver(s).

50. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement and its exhibits and ancillary documents be authorized and approved in their entirety.

51. The Purchase Agreement may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not materially change the terms of the Purchase Agreement or modify the express terms of this Sale Order.

52. Each and every federal, state and local governmental agency, department or official is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

53. Subject to further order of the Court and consistent with the terms of the Purchase Agreement and the Transition Services Agreement, the Debtors and the Purchaser are authorized to, and shall, take appropriate measures to maintain and preserve, until the consummation of any chapter 11 plan for the Debtors, the books, records and any other documentation, including tapes or other audio or digital recordings and data in or retrievable from computers or servers relating to or reflecting the records held by the Debtors or their affiliates relating to the Debtors' businesses.

54. Consistent with the terms of the Purchase Agreement and the Transition Services Agreement, the Debtors have agreed to transfer to the Purchaser (or one or more of its subsidiaries, as applicable) a substantial portion of the Debtors' cash management system maintained pursuant to an order of this Court (Docket No. 1303) entered on May 20, 2009, including, without limitation, several bank accounts maintained by the Debtors. Such cash management system assets, including such bank accounts, constitute Purchased Assets under the Purchase Agreement. Notwithstanding the foregoing transfers, the Debtors will maintain such bank accounts and a cash management system that is necessary to effect the orderly administration of the Debtors' chapter 11 estates, including any modifications thereof after the Closing, to ensure a reasonable accounting and segregation of the Debtors' cash. To the extent any funds of the Debtors that do not constitute Purchased Assets are held in accounts transferred to the Purchaser (or one or more of its subsidiaries), such funds shall be promptly returned to the appropriate Debtor, and such funds shall remain subject to any and all liens of the Debtors'

lienholders thereon. Likewise, to the extent that any funds that constitute Purchased Assets are held in accounts maintained by one or more Debtors after the Closing, such funds shall be promptly transferred to the Purchaser. The applicable Debtors and the Purchaser (and/or one or more of its subsidiaries, as applicable), may execute any agreement, assignment, novation, instrument or other document the parties deem necessary or appropriate to effectuate the transfers described in this paragraph, which is consistent with the general authority to the same provided in paragraph 6 hereof.

55. Those powers of attorney granted by Chrysler LLC and any of the other Debtors and any related documentation entered into by such entities for the purpose of (a) effectuating the transfers of such entities' interests in their non-debtor foreign affiliates to the Purchaser, Chrysler Motors LLC or their respective designees in connection with consummation of the Sale Transaction or (b) effectuating the transfers of interests in certain foreign affiliates to Chrysler LLC or any of the other Debtors prior to consummation of the Sale Transaction are here by ratified and approved in all respects, regardless of whether such powers of attorney or other documentation were issued or entered into prior to or subsequent to the Petition Date.

56. The Debtors are hereby authorized and empowered, upon and in connection with the Closing, to change their corporate names and the caption of these chapter 11 cases, consistent with applicable law. The Debtors shall file a notice of change of case caption within one business day of the Closing, and the change of case caption for these chapter 11 cases shall be deemed effective as of the Closing.

57. As provided by Bankruptcy Rules 6004(h) and 6006(d), this Sale Order shall not be stayed for ten days after its entry and shall be effective as of 12:00 noon, Eastern Time, on Friday June 5, 2009, and the Debtors and the Purchaser are authorized to close the Sale

Transaction on or after 12:00 noon, Eastern Time, on Friday June 5, 2009.[4] Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay or risk its appeal being foreclosed as moot in the event Purchaser and the Debtors elect to close prior to this Sale Order becoming a Final Order.

58. Any amounts payable to the Purchaser shall be paid by the Debtors in the manner provided in the Purchase Agreement without further order of this Court, shall be an allowed administrative claim under sections 503(b) and 507(a)(2) of the Bankruptcy Code, shall be protected as provided in the Bidding Procedures Order and shall not be altered, amended, discharged or affected by any plan proposed or confirmed in these cases without the prior written consent of the Purchaser.

59. This Court retains jurisdiction to interpret, implement and enforce the terms and provisions of this Sale Order including to compel delivery of the Purchased Assets, to protect the Purchaser against any Claims and to enter any orders under sections 105, 363 or 365 (or other applicable provisions) of the Bankruptcy Code to transfer the Purchased Assets and the Assumed Agreements to the Purchaser.

Dated: New York, New York
June 1, 2009

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

[4] The Court considered the Debtor's request for a waiver of the stay imposed, pursuant to Bankruptcy Rules 6004(h) and 6006(d), objections filed to that request, and Debtors' modified request as of June 1, 2009, whereby Debtors' sought a waiver of the stay imposed to permit a closing to take place on Thursday, June 4, 2009 at 9:00 a.m. In their modified request, the Debtors reference the deposition testimony of Matthew Feldman, an advisor to the President's Auto Task Force, indicating that the Debtors are losing $100 million a day, and the other exigent circumstances facing Chrysler, including the continuing deterioration of its asset value, its supply chain, and its going-concern value. The Court determines that a partial waiver of the stay is justified. Any request to further modify the stay should be made to the appellate court.

EXHIBIT A
PURCHASE AGREEMENT

EXHIBIT B
SUMMARY SCHEDULE OF FILED OBJECTIONS

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Chapter 11
Chrysler, LLC, *et al.*,	:	Case No. 09- 50002 (AJG)
Debtors.	:	(Jointly Administered)

ORDER CERTIFYING SALE ORDER FOR IMMEDIATE APPEAL TO UNITED STATES COURT OF APPEALS, PURSUANT TO 28 U.S.C. § 158(d)(2)

This matter coming before the Court on the Motion of Debtors and Debtors in Possession for an Order Certifying the Sale Order for Immediate Appeal to United States Court of Appeals, Pursuant to 28 U.S.C. § 158(d)(2) (the "Motion"),[1] filed by the above-captioned debtors and debtors in possession (the "Debtors"); the Court having reviewed the Motion and the prior proceedings herein; and the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b) and (iii) notice of the Motion was sufficient under the circumstances; and having considered the response of the Indiana Pensioners; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. The Court certifies that an immediate Appeal of the Sale Opinion, the TARP Opinion and Sale Order is appropriate because this case involves a matter of public importance, and an immediate appeal may materially advance the progress of this case

[1] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

3. This Court therefore certifies the Sale Opinion, the TARP Opinion and Sale Order for immediate appeal, pursuant to 28 U.S.C. § 158(d)(2).

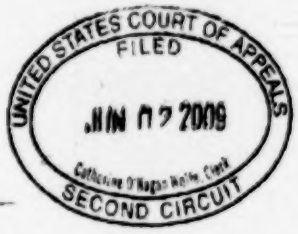
Dated: New York, New York
June 2, 2009

s/Arthur J. Gonzalez
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 2nd day of June, two thousand nine,

Before: HON: Dennis Jacobs, Chief Judge,
HON: Amalya Kearse,
HON: Robert D. Sack,
Circuit Judges.



In re: Chrysler LLC, aka Chrysler Aspen, aka Chrysler Town & Country, aka Chrysler 300, aka Chrysler Sebring, aka Chrysler PT Cruiser, et al.,

Debtor-Plaintiffs-Petitioners.

ORDER
Docket No. 09-2311-mb

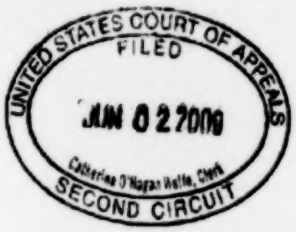
The motion for a stay and for expedited appeal filed by appellants Indiana State Teachers' Retirement Fund, et al., is granted. All parties are directed to file simultaneous merits briefs by noon on Thursday, June 4, 2009 via email to the Clerk of Court at Catherine_Wolfe@ca2.uscourts.gov. The parties may presume that the Court will have read the opinions of the Bankruptcy Court. Oral argument on the appeal will be heard by this panel on Friday, June 5, 2009 at 2:00 p.m. in the Ceremonial Courtroom, 9th Floor, 500 Pearl Street NY NY

FOR THE COURT:

By: Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe, Clerk

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 2d day of June , two thousand and nine.



PRESENT: HON. Dennis Jacobs, Chief Judge
HON. Amalya L. Kearse
HON. Robert D. Sack
Circuit Judges.

In re: Chrysler LLC, aka Chrysler Aspen, aka Chrysler Town & Country, aka Chrysler 300, aka Chrysler Sebring, aka Chrysler PT Cruiser, et. al

Debtor-Plaintiff-Petitioners

ORDER
Docket Number: 09-2311-mb

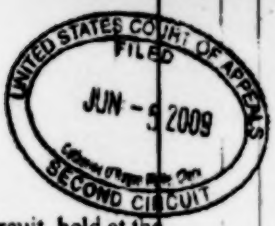
IT IS HEREBY ORDERED that the petition of Appellant Chrysler LLC for leave to appeal pursuant to 28 U.S.C. § 158(d) is GRANTED.

FOR THE COURT,

By: Catherine O'Hagan Wolfe
Catherine O'Hagan Wolfe, Clerk

SDNY (NYNY
09-50002
HON. GONZALEZ

MANDATE



UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 5th day of June two thousand nine.

Before: HON. Dennis Jacobs, Chief Judge,
HON. Amalya L. Kearse,
HON. Robert D. Sack,
Circuit Judges.

In Re: Chrysler LLC, aka Chrysler Aspen, aka Chrysler Town & Country, aka Chrysler 300, aka Chrysler Sebring, aka Chrysler PT Cruiser, et al.,

Debtor-Plaintiffs-Petitioners.

ORDER
Docket Number: 09-2311-bk

The June 1, 2009 order of the United States Bankruptcy Court for the Southern District of New York, authorizing the sale of substantially all of the debtors' assets, on terms stated therein, is affirmed for substantially the reasons stated in the opinions of Bankruptcy Judge Gonzalez, entered May 31, 2009. An opinion (or opinions) of this Court will issue in due course. The mandate shall issue forthwith.

The stay entered by this Court on June 2 will continue until the earlier of 4:00 p.m. on Monday, June 8, 2009 or the time at which a stay is denied by the U.S. Supreme Court.

FOR THE COURT

Catherine O'Hagan Wolfe

Catherine O'Hagan Wolfe,
Clerk of Court

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
by Joseph M. Rodriguez
DEPUTY CLERK

ISSUED AS MANDATE:
JUN 05 2009

BEST AVAILABLE COPY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

DETERMINATION

WHEREAS, section 101 of the Emergency Economic Stabilization Act of 2008 (the "Act") authorizes the Secretary of the Treasury (the "Secretary") to establish the Troubled Asset Relief Program (the "TARP") to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with the Act and the policies and procedures developed and published by the Secretary;

WHEREAS, section 3(5) of the Act defines the term "financial institution" to mean any institution, including, but not limited to, any bank, savings association, credit union security broker or dealer, or insurance company, established and regulated under the laws of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.

WHEREAS, section 3(9)(A) of the Act defines the term "troubled assets" to mean residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability;

WHEREAS, section 3(9) (B) of the Act further defines the term "troubled assets" to mean any other financial instrument that the Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System (the "Chairman"), determines the purchase of which is necessary to promote financial market stability, but only upon transmittal of such determination, in writing, to the appropriate committees of Congress;

WHEREAS, section 3(1) of the Act defines the term "appropriate committees of Congress" to mean the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives;

WHEREAS, certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles have applied under the TARP Systemically Significant Failing Institutions Program (the "SSFI") requesting that the Department of the Treasury purchase obligations of such companies consistent with the SSFI;

WHEREAS, such thrift and other holding companies engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the

manufacturing and purchase of such vehicles are "financial institutions" for purposes of section 3(5) of the Act as they are "institution[s]" established and regulated under the laws of the United States and have significant operations in the United States; and,

WHEREAS, as Secretary, I have consulted with the Chairman, and we have jointly concluded that the TARP's purchase of the obligations is necessary to promote stability to the financial system of the United States.

NOW, THEREFORE, I HEREBY DETERMINE that the obligations of such financial institutions are financial instruments the purchase of which is necessary to promote stability to the financial system of the United States, and, as such, are "troubled assets," as that term is defined in section 3(9)(B) of the Act, and eligible to be purchased under the TARP; and

I HEREBY direct that this determination be transmitted to the appropriate committees of Congress.

Henry M. Paulson, Jr.

December 19, 2008

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Richard Shelby
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Senator Shelby:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Paul Ryan
Ranking Member
Committee on the Budget
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Ryan:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Charles Rangel
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable David Obey
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Jim McCrery
Ranking Member
The Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. McCrery:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Jerry Lewis
Ranking Member
The Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Lewis:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Judd Gregg
Ranking Member
The Committee on the Budget
United States Senate
Washington, DC 20510

Dear Senator Gregg:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Charles Grassley
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Senator Grassley:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Barney Frank
Chairman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Kent Conrad
Chairman
Committee on the Budget
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Christopher Dodd
Chairman
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Thad Cochran
Ranking Member
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Senator Cochran:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Robert Byrd
Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Max Baucus
Chairman
Committee on Finance
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable Spencer Bachus
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Bachus:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson, Jr.

Enclosure

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

December 23, 2008

The Honorable John Spratt
Chairman
Committee on the Budget
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Emergency Economic Stabilization Act of 2008 authorizes the Treasury Department to purchase troubled assets from any financial institution as part of the Troubled Assets Relief Program (TARP). Under Section 3(9)(B) of the Act, the Secretary of the Treasury may designate as a troubled asset any financial instrument that he determines, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, the purchase of which is necessary to promote financial market stability.

After consulting with the Chairman of the Board of Governors of the Federal Reserve System, I have determined that the purchase of obligations of certain thrift and other holding companies which are engaged in the manufacturing of automotive vehicles and the provision of credit and financing in connection with the manufacturing and purchase of such vehicles is necessary to promote financial market stability.

In accordance with Section 3(9)(B) of the Act, I am enclosing my determination and informing you that this purchase will be made under the TARP Systemically Significant Failing Institution Program.

Sincerely,

Henry M. Paulson Jr.

Henry M. Paulson, Jr.

Enclosure

DETERMINATION

WHEREAS, section 101 of the Emergency Economic Stabilization Act of 2008 (the "Act") authorizes the Secretary of the Treasury (the "Secretary") to establish the Troubled Assets Relief Program (the "TARP") to purchase, and to make and fund commitments to purchase, troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary, and in accordance with the Act and the policies and procedures developed and published by the Secretary;

WHEREAS, section 3(5) of the Act defines the term "financial institution" to mean any institution, including, but not limited to, any bank, savings association, credit union security broker or dealer, or insurance company, established and regulated under the laws of the United States or any State, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Commonwealth of Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands, and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government;

WHEREAS, section 3(9)(A) of the Act defines the term "troubled assets" to mean residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability;

WHEREAS, section 3(9)(B) of the Act further defines the term "troubled assets" to mean any other financial instrument that the Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System (the "Chairman"), determines the purchase of which is necessary to promote financial market stability, but only upon transmittal of such determination, in writing, to the appropriate committees of Congress;

WHEREAS, section 3(1) of the Act defines the term "appropriate committees of Congress" to mean the Committee on Banking, Housing, and Urban Affairs, the Committee on Finance, the Committee on the Budget, and the Committee on Appropriations of the Senate; and the Committee on Financial Services, the Committee on Ways and Means, the Committee on the Budget, and the Committee on Appropriations of the House of Representatives;

WHEREAS, the TARP has established the Automotive Industry Financing Program ("AIFP") to purchase and fund commitments to purchase troubled assets from holding companies and other companies engaged in the manufacturing of automotive vehicles in order to prevent a significant disruption of the American automotive industry, a risk to financial market stability and a negative effect on the real economy of the United States;

WHEREAS, certain companies engaged in the manufacturing of automotive vehicles have applied under the TARP AIFP requesting that the Department of the Treasury purchase debt obligations or equity of such holding companies and other companies consistent with the AIFP;

WHEREAS, such holding companies and other companies are "financial institutions" for purposes of section 3(5) of the Act as they are "institutions" established and regulated under the laws of the United States and have significant operations in the United States; and

WHEREAS, as Secretary, I have consulted with the Chairman, and we have jointly concluded that the TARP's purchase of the debt obligations or equity is necessary to promote financial market stability.

NOW, THEREFORE, I HEREBY DETERMINE that the debt obligations or equity of such institutions are financial instruments the purchase of which is necessary to promote financial market stability, and, as such, are "troubled assets," as that term is defined in section 3(9)(B) of the Act, and eligible to be purchased under the TARP; and

I HEREBY direct that this determination be transmitted to the appropriate committees of Congress.

Timothy F. Geithner

April 29, 2009

No. _____

IN THE

Supreme Court of the United States

IN RE CHRYSLER LLC,
Debtors,

INDIANA PENSIONERS, INDIANA STATE TEACHERS RETIREMENT FUND,
Petitioners,

v.

CHRYSLER LLC, *ET AL.*,
Respondents.

In Opposition to Application for a Stay Pending Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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RESPONDENTS' OPPOSITION TO APPLICATION FOR A STAY PENDING WRIT OF CERTIORARI

CORINNE BALL
TODD R. GEREMIA
JONES DAY
222 East 41st Street
New York, New York
10017
(212) 326-3939

THOMAS F. CULLEN
(Counsel of Record)
GREGORY M. SHUMAKER
JONES DAY
51 Louisiana Ave., N.W.
Washington, DC 20001
(202) 879-3900

Counsel for Respondents Chrysler, LLC et al.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondents disclose as follows:

Debtor Chrysler LLC is a Delaware Limited Liability Company. CarCo Intermediate HoldCo II LLC holds 100% of the membership interest in Chrysler LLC. As set forth in more detail below, Chrysler LLC holds, either directly or indirectly, 100% of the ownership interest in all of the remaining debtors.

Chrysler LLC directly holds 100% of the ownership interest in the following debtors: Chrysler Aviation Inc., TPF Asset, LLC, TPF Note, LLC, Chrysler Institute of Engineering, Chrysler International Services S.A., Chrysler Motors LLC, Utility Assets LLC, Chrysler International Corporation (USA), Chrysler Service Contracts Inc., Chrysler Transport Inc., Dealer Capital Inc., DCC 929, Inc., and Peapod Mobility LLC.

Chrysler Motors LLC holds 100% of the ownership interest in the following debtors: Chrysler Realty Company LLC, Chrysler Vans LLC, Global Electric Motorcars, LLC, and Chrysler Dutch Holding, LLC.

Chrysler International Corporation (USA) holds 100% of the ownership interest in debtor Chrysler International Limited, LLC.

Chrysler Service Contracts Inc. holds 100% of the ownership interest in debtor Chrysler Service Contracts of Florida, Inc.

Chrysler International Services S.A. holds 100% of the ownership interest in debtor Chrysler Technologies Middle East Ltd.

Global Electric Motorcars, LLC holds 100% of the ownership interest in debtors NEV Mobile Service, LLC and NEV Service, LLC.

Chrysler Dutch Holding, LLC holds 100% of the ownership interest in debtor Chrysler Dutch Investment, LLC.

CNI CV holds 100% of the ownership interest in debtor Chrysler Dutch Operating Group, LLC.

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Respondents-appellees Chrysler LLC *et al.* respectfully submit this opposition to the application for a stay by the petitioners-appellants Indiana Pension Funds of a judgment by the United States Court of Appeals for the Second Circuit, entered on June 5, 2009, pending disposition of the Funds' not-yet-filed certiorari petition.

INTRODUCTION

The Indiana Funds, Maria Pasquale, and the Ad Hoc Committee of Consumer Victims of Chrysler are seeking a stay that, if it were granted, would effectively decide the merits of an issue on which a total of four judges – including a three-judge panel presided over by Chief Judge Jacobs—have unanimously rejected their positions after going to extraordinary lengths to give these petitioners a three-day hearing and then complete plenary appellate review and accompanying motion practice in a total of just nine days. Petitioners bury this fact in their applications, but, in light of Chrysler's fragile state and daily erosion of value, ***Fiat S.p.A. has set a deadline of June 15, 2009 for the sale*** of Chrysler's assets to New CarCo Acquisition LLC, a new entity formed by Fiat. Accordingly, unless this Court were to decide the Funds' not-yet-filed petition for certiorari and then, in the unlikely event that their petition were granted, order briefing completed and proceed to decide the merits before June 15, the sale will not happen and the petitioners, who have already lost in both the Bankruptcy Court and in the Second Circuit, will have effectively prevailed on their meritless objections to the sale.

This impossible schedule demanded by the Funds' application is reason alone to deny it, especially in light of the presumption of correctness that attaches to the lower court's order.[1] But the applicants have also not made any of the other showings required to obtain a stay. Indeed, they cannot show any injury at all in the absence of a stay—let alone an irreparable one. The Funds hold just 0.61% of $6.9 billion in debt under Chrysler's senior secured credit facility. If the sale goes forward as ordered by the Bankruptcy Court and the Second Circuit, New CarCo Acquisition will pay Chrysler $2 billion and the proceeds from the sale will be distributed *pro rata* to the lenders under this First Lien Credit Agreement – with the Funds receiving $12.2 million (on a distressed investment that they acquired for $17 million). Critically, notwithstanding two years of exhaustive effort by Chrysler to find a buyer and a bidding auction in the Bankruptcy Court, ***there is no other bidder for Chrysler's assets*** and, as the Bankruptcy Court expressly found, the only other viable alternative for Chrysler is to proceed with a liquidation that will return ***no more than $800 million*** for all constituents.

These are the only two choices Chrysler has. As Chief Judge Jacobs aptly put it to the Funds' counsel at oral argument, "You can't wait for a better deal to come

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[1] *Whalen v. Roe*, 423 U.S. 1313, 1316 (1975) (Marshall, J., in chambers) (denying a stay and applying the principle that "the judgment of the lower court, which has considered the matter at length and close at hand, and has found against the applicant" is "presumptively correct"); ROBERT L. STERN ET AL., SUPREME COURT PRACTICE § 17.19, at 798 (9th ed. 2009) (noting the "concern that to grant a stay would effectively be to determine the case on the merits"); *Montgomery v. Jefferson*, 468 U.S. 1313, 1314 (1984) (Marshall, J., in chambers) (denying stay where, "[g]iven the little time left for evaluating . . . the questions raised by the application, I am not persuaded to interfere with the actions of the Second Circuit").

in from Studdebaker." *See* http://www.nytimes.com/2009/06/06/business/06 chrysler.html? (as reported in New York Times, June 5, 2009, "Appeals Court Refuses to Block Chrysler Sale"). Accordingly, if Chrysler is forced into liquidation by a stay that will kill the sale, the Funds will suffer no additional loss. By contrast, a stay would impose devastating injury on Chrysler and its stakeholders (including other lenders under the $6.9 billion facility), employees, suppliers, and the public interest at large. In monetary terms alone, the record shows that the loss to Chrysler and its stakeholders will be more than $1.2 billion (*i.e.*, the difference between the $2 billion proceeds from the sale and the, at most, $800 million in cash from a liquidation) – value that will not be recovered if the sale does not happen by June 15 and Chrysler is instead forced to liquidate due to lack of funding to continue as a going concern. The additional losses to Chrysler's dealers, lessors, workforce, and suppliers that have been selected by New CarCo Acquisition and assigned to as part of the purchased assets would add to that already devastating loss.

The calamitous impact of imposing the stay requested by petitioners would also, in all likelihood, be to no avail to petitioners. The Funds try to make it appear that the Bankruptcy Court invoked a novel procedure to authorize the sale of Chrysler's assets before confirmation of a plan of reorganization. But the Bankruptcy Code and long-established precedent expressly provides for this procedure where, as here, it is necessary to preserve the going-concern value of the enterprise and is effected without undermining the protections of the plan process.

Here, the Bankruptcy Court made careful findings—which have been unanimously affirmed—establishing that the use of this well-established sale procedure was authorized here. And, after careful review of the proposed sale agreement—including review of the designations by New CarCo Acquisition of the contracts to be assumed and assigned to it and cured at its expense—the Court determined that the proposed sale does not effect any distribution of Chrysler's property or violate the priority scheme established by the Bankruptcy Code. There is nothing in the Bankruptcy Court's fact-intensive analysis or the Second Circuit's affirmance on clear-error review that either warrants review by this Court or, in the unlikely event that certiorari were granted, would lead to a reversal.

The petitioners have had all of the process to which they are entitled while the lower courts have worked diligently to decide their objections in a timely fashion to allow for the proposed Fiat Sale to stay on track. Petitioners should not be permitted to use the extraordinary remedy of a stay, pending the unlikely prospect of any further, discretionary review in this Court or any change in the ultimate result here, to unravel what the lower courts have ordered, stop the sale of Chrysler's assets and force the company into liquidation, and cause massive harm to Chrysler and the public interest.

BACKGROUND

The Debtors commenced these cases to implement a prompt sale of most of their operating assets that will preserve Chrysler's business as a going concern under new ownership and maximize the Debtors' recovery for the benefit of their creditors. Section 363 of the Bankruptcy Code expressly authorizes this procedure

and provides that, after notice and a hearing, a trustee or debtor-in-possession "may use, sell, or lease, other than in the ordinary course of business property of the estate." 11 U.S.C. § 363(b).

To that end, the Debtors, Fiat and New CarCo Acquisition have entered into an agreement under which (a) the Debtors will sell most of their operating assets to New CarCo Acquisition in exchange for $2 billion in cash; and (b) Fiat will contribute state-of-the-art small car and other technology and expertise, as well as its global distribution and purchasing network to New CarCo Acquisition. This transaction is hereafter referred to as the Fiat Sale. (JA1801-02.) In addition, New CarCo Acquisition has reviewed Chrysler's leases and executory contracts, including its supply chain contracts, its dealer agreements and its collective bargaining agreement with the United Auto Workers, and decided in its business judgment which to assume based upon the future benefit they will confer on New CarCo Acquisition (thereby relieving Chrysler of billions of dollars of liability). (JA3226.)

The Fiat Sale is financially backed by the U.S. Department of the Treasury and Export Development Canada, an affiliate of the Canadian Government, which together are providing New CarCo Acquisition with almost $7 billion in an acquisition finance facility. (JA2349-2374.) In addition the U.S. Treasury and Export Development Canada provided $4.9 billion of debtor-in-possession financing (the "DIP Loan"), largely to bridge Chrysler's continuing losses until a sale is consummated. (JA2375.) The DIP Loan has a series of milestones which tie its

continuing availability to achieving progress with regard to the Fiat Sale. (JA2375-2511.) It also provides funding after the sale to allow for the orderly wind down of Chrysler's remaining assets, including eight factories and discontinued car lines, which remain subject to the lien securing the First Lien Credit Agreement, described below.

On May 3, 2009, the Debtors filed a motion seeking approval to consummate the Fiat Sale or a similar transaction with some other interested bidder. In connection with that motion, the Debtors, after two days of hearings, obtained the Bankruptcy Court's approval of a bidding procedure on May 7. Despite widespread publicity regarding Chrysler's situation, the only bid received was the offer of New CarCo Acquisition to enter into the Fiat Sale. (Stay App. 27a.)

The Bankruptcy Court conducted a three-day hearing on the sale motion from May 27-29, 2009. (Stay Opp. App. 12a.) At that hearing and the bidding procedures hearing that preceded it, the Debtors presented testimony from 16 witnesses and introduced 48 exhibits into evidence. As the Bankruptcy Court found, the Debtors' evidence established that: (i) the Fiat Sale is the product of sound business judgment (Stay App. 25a.), (ii) the Debtors have received the consent to the sale from the Collateral Trustee (Stay App. 11a-12a), who holds the first lien on the assets that secure Chrysler's repayment obligations to the lenders, including the Funds, that are parties to the Amended and Restated First Lien Credit Agreement, dated November 29, 2007 (JA2512-2681), provided that the cash proceeds of the Fiat Sale are distributed to the lenders under the First Lien Credit

Agreement, (iii) despite exhaustive efforts the Fiat Sale is the only alternative to immediate liquidation that the Debtors have, (SPA17-19, SPA33-34) and (iv) the $2 billion purchase price is fair, provides more than market value and far exceeds the value the Debtors (and the Lenders) will realize if the Fiat Sale is not consummated. (SPA17-19, 21.) The evidence also showed that, in light of the ongoing deterioration of the Debtors' assets, any material delay in closing the Fiat Sale will likely kill it—depriving the Debtors, their stakeholders and the country of its substantial benefits. (SPA175.)

The Funds did not call a single witness. They submitted no fact or expert testimony regarding the value of the Debtors' assets or the fairness of the Fiat Sale. They adduced no evidence that there was any other transaction available, let alone one that might yield more than $2 billion for the Debtors.

From this evidentiary record, the Bankruptcy Court made the detailed factual findings that lie at the heart of this case, including:

- "The Debtors have demonstrated . . . good, sufficient and sound business purposes and justifications for the immediate approval of the . . . [Fiat Sale]." (Stay App. 25a.)

- "Currently, the Debtors are losing over $100 million dollars per day." "Unless the [Fiat Sale] is approved without delay, the Debtors' assets will continue to erode, and they will be forced to liquidate in the near term." (*Id.*)

- There are "compelling circumstances for the approval of the . . . [Fiat Sale] outside of the ordinary course of the Debtors' business pursuant to section 363(b) of the Bankruptcy Code prior to, and outside of, a plan of reorganization in that, among other things, the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Sale Motion is not granted on an expedited basis." (*Id.*)

- "[T]ime is of the essence in (a) consummating the Fiat Sale, (b) preserving the viability of the Debtors' businesses as going concerns and (c) minimizing the widespread and adverse economic consequences for the Debtors' estates, their creditors, employees, retirees, the automotive industry and the broader economy that would be threatened by protracted proceedings in these chapter 11 cases." (Stay App. 25a-26a.)

- "The consummation of the [Fiat Sale] outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. (Stay App. 26a.)

- "[T]he consideration provided for in the Purchase Agreement constitutes the highest or otherwise best offer for the Purchased Assets and provides fair and reasonable consideration for the Purchased Assets." (Sale App. 26a-28a.)

- "[T]he [Fiat Sale] is the only alternative to liquidation available to the Debtors." (Stay App. 28a.)

- "[T]he [Fiat Sale] will provide a greater recovery for the Debtors' creditors than would be provided by any other practical available alternative, including, without limitation, liquidation whether under chapter 11 or chapter 7 of the Bankruptcy Code." (*Id.*)

- "In light of the need to grant the relief requested in the Sale Motion on an expedited basis to avoid any erosion in the going concern value of the Purchased Assets, a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities . . . ." (Stay App. 31a.)

- "The Debtors may sell the Purchased Assets free and clear of all Claims because, in each case where a Claim is not an Assumed Liability, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied." (Stay App. 35a.)

The Funds filed a notice of appeal from the Bankruptcy Court's order, and the Debtors promptly moved in the Bankruptcy Court for an order certifying the

orders for immediate appeal to the United States Court of Appeals for the Second Circuit. The Bankruptcy Court granted the Debtors' motion, and, on June 2, 2009, the Second Circuit thereafter accepted the appeal pursuant to 28 U.S.C. § 158(d) and stayed the Bankruptcy Court's orders. (Stay App. 70a-73a.) In light of the imminence of a June 15, 2009 date by which the Fiat Sale must close (JA1809-10; JA3277), the Second Circuit ordered submission of all appeal briefs by noon on June 4 and oral argument starting at 2:00 p.m. the next day. (Stay App. 72a.) The Court heard argument for nearly three hours and then, after the panel adjourned to conference, Chief Judge Jacobs read an order from the bench affirming the Bankruptcy Court's orders for substantially the reasons stated in the Bankruptcy Court's decisions and stating that the Court's opinion (or opinions) "will issue in due course." The mandate issued with the Court's order on June 5. (Stay App. 74a.) And the Court further ruled that the stay it had ordered on June 2 would continue until the earlier of 4:00 p.m. on June 8, 2009 or the time at which an application for a stay is denied by the U.S. Supreme Court. (*Id.*)

The Funds submitted this application for a stay just before midnight on June 6. The Funds have not filed a petition for certiorari, nor did they state in their application when they intend to file one.

REASONS FOR DENYING THE APPLICATION FOR A STAY

I. THE FUNDS HAVE NOT MADE ANY OF THE REQUISITE SHOWINGS TO WARRANT THE EXTRAORDINARY RELIEF OF A STAY

A stay pending the Court's decision on a petition for certiorari is an "extraordinary" remedy that can be obtained "only if a four-part showing is made."

Rostker v. Goldberg, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers). The applicant must show both a "reasonable probability" that the Court will grant certiorari, *id.*, and a "significant possibility of reversal of the lower court's decision." *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983). Even apart from the likelihood of a grant and ultimate reversal, the applicant is also required to make threshold showings of irreparable injury in the absence of a stay and, upon balancing the equities, that any injury to the applicant is outweighed by the injury to the opposing party and the public interest. *See Rostker*, 448 U.S. at 1308; STERN & GRESSMAN, § 17.19, at 788.

The Funds cannot make any one of these four showings here.

A. The Funds Cannot Show Irreparable Harm in the Absence of a Stay

First, the Fund's application should be denied on the sole ground that it will not be irreparably harmed—or, indeed, harmed at all—in the absence of a stay. *See Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1317 (1983) (Blackmun, J., in chambers) ("An applicant's likelihood of success on the merits need not be considered . . . if the applicant fails to show irreparable injury in the absence of a stay."); *Rubin v. United States*, 524 U.S. 1301, 1301 (1998) (Rehnquist, C.J., in chambers) ("An applicant for stay first must show irreparable harm if a stay is denied."); *see also* STERN & GRESSMAN § 17.19(a), at 789 ("A Justice considering an application for a stay is likely to first examine the motion papers to see whether denial of the stay would work an irreparable injury on the applicant. If it does not, that may in itself be sufficient grounds for denying the application.").

The Bankruptcy Court made proper findings, well-supported by proof after the three-day hearing and not overturned on clear-error review by the Second Circuit, that the liquidation value of Chrysler is no greater than $800 million—far less than the cash value to Chrysler from the $2 billion sale of substantially all of its assets—that no bidder other than Fiat came forward to purchase Chrysler's assets, and that the Fiat Sale is the only viable alternative other than immediate liquidation of the company. (Stay App. 27a-29a; JA1742; JA2943-2926.) Accordingly, *even if* the Court were to (i) grant Indiana's as-yet-to-be-filed petition for certiorari, and (ii) reverse the Second Circuit's judgment, all of the First Lien Lenders, including the Funds, will be far worse off than if the sale were to occur as authorized by the Bankruptcy Court's order. (Stay App. 27a-29a.) If the sale does not go forward, there will be $800 million or less to distribute to the Funds and Chrysler's other creditors, while, if the Court does not enter any further stay and the sale does go forward as authorized by the lower courts, the Funds and the other First Tier Lenders will share *pro rata* distributions of the $2 billion proceeds from the sale.

The Funds, thus, cannot show any harm to them if a stay is denied. Tellingly, the Funds devote their argument on irreparable injury to a purported procedural "harm" that will befall them by virtue of the sale making their petition for certiorari moot. (Stay Motion at 25.) But there is of course no right to review in this Court, and the Second Circuit has already gone to extraordinary lengths to decide the Funds' appeal as of right in less than a week. Meanwhile, the Funds do

not even try to show that they will suffer from any *actual harm*, let alone irreparable harm, if the Court denies their application. Their counsel wrote in the Introduction to the Funds' application that, without a stay, there will be "economic harm measured in the millions of dollars to the Indiana Pensioners." (*Id.* at 3.) But these are just words on a page, and there is not a shred of *proof* in the record to support this assertion.

Moreover, even though the Funds cannot claim any harm stemming from the Fiat Sale as compared to the alternative of liquidating Chrysler, to the extent they have any injury at all it is readily compensable in damages – and thus not irreparable. The Administrative Agent, at the instruction of lenders holding more than 90% of the $6.9 billion debt under the First Lien Agreement, caused the Collateral Trustee to consent to the Fiat Sale in exchange for $2 billion in cash. (JA3117-3124.) That action was, as the Bankruptcy Court held, required by the terms of the First Lien Agreement to which the Funds are a signatory. (JA2512-2681.) If the Funds believe the Administrative Agent's action was not authorized, however, they may seek recovery against it for breach of contract. Such recovery would either be measured by the difference between the face-value of the Funds' $42 million investment and the $12.2 million the Funds will receive upon completion of the Fiat Sale, or, more realistically, a far lesser amount. The Funds do not mention this in their motion, but they provided their *consent* to a $2.5 billion sale. (JA3183-3196.) Their *pro rata* distribution in that event would have been approximately $13.5 million, or $1.5 million more than under the actual terms of

the Fiat Sale. (*Id.*) Accordingly, if the Funds believe the Administrative Agent damaged them by consenting to a $2 billion sale, they can simply seek recovery of this $1.5 million as against the Administrative Agent.

There is not, however, any basis for the Court to effectively stop the $2 billion Fiat Sale due to any "harm" that the Funds claim they have suffered due to the Administrative Agent's conduct. For this reason alone, the Funds' application for a stay should be denied.

B. Chrysler, Its Creditors, Employees, and the Public Interest, on the Other Hand, Will Be Irreparably Injured by a Stay That Will, In Practical Effect, Kill Chrysler's Business As a Going Concern

While the Funds cannot show any irreparable harm in the absence of a stay, Chrysler, its stakeholders – including other lenders – and the public interest will suffer immense harm by a stay that will, in practical effect, kill the Fiat Sale and lead to a liquidation that, *even the Funds acknowledge*, will harm the Funds and Chrysler's creditors. On a straightforward balancing of the harms here, the Funds have not shown any damage to them if the Fiat Sale goes forward, while a stay threatens more than $1.2 billion in direct damages to Chrysler and still further and immense harm, as detailed below, to the public interest. *See* STERN & GRESSMAN, § 17.19 at 788 ("At the least, the injury to the applicant if no stay is granted must outweigh the injury to the opposing party or others (including the members of the public) if the stay is granted.").

As the Bankruptcy Court found, the Fiat Sale is the lone alternative that will preserve the going-concern value of the Debtors' assets and allow the Debtors to realize some of that value. (JA62-64.) New CarCo Acquisition, as the beneficiary of

valuable contributions from Fiat and the competitive cost structure assured by the terms of the collective bargaining agreement with the United Auto Workers, has convinced lenders to commit approximately $7 billion in financing to acquire Chrysler's operating assets. (JA2327; JA2349.) Chrysler has limited financing to proceed with a liquidation and up to $1.9 billion in financing to cover its losses and bridge the Fiat Sale. (JA2375.) That bridge support is expressly conditioned on the Fiat Sale proceeding promptly, with Fiat, as a matter of business judgment, setting the date for closing as no later than June 15, 2009. (JA1809-10; JA3277.)

The failure to consummate the Fiat Sale will result in the immediate, piecemeal liquidation of Chrysler's assets in a distressed market—a scenario that would impose enormous harm on Chrysler and its constituencies. (JA997-1005; JA1935.) The Court will not, however, decide the Funds' yet-to-be-filed petition for certiorari and—in the unlikely event that such a petition were to be granted—reach the merits of the Second Circuit's judgment before next week. Accordingly, any further stay in this matter beyond the stays already imposed by the Bankruptcy Court and the Second Circuit to facilitate their review will end the prospect of the Fiat Sale and subject Chrysler to a liquidation in which it and its creditors, *including the Funds*, will realize far less value from Chrysler's estate.

Indeed, even a stay of only a few days would impose significant harm on Chrysler. As the evidence before the Bankruptcy Court showed, Chrysler is forced to spend $100 million *each day* the closing of the Fiat Sale is delayed—a daily figure that dwarfs the speculative and unproven losses that the Funds assert they will

suffer as the holders of loans having a face amount of $42 million. (JA1446-1447; JA2910.) That delay impairs Chrysler's ability to obtain the highest and best value for its assets. There is simply no way to enter any stay here that does not impose great harm on Chrysler and its stakeholders.

Further still, it is not just the company itself that hangs in the balance; the broader public interest is implicated as well. The immediate liquidation that would result if the Fiat Sale collapses would have a devastating impact on Chrysler's employees and retirees, on communities around the country, and on the economy as a whole. Of Chrysler's 55,000 current employees, 38,500 are in the United States. As of the commencement of these bankruptcy proceedings, Chrysler had 32 manufacturing and assembly facilities, 23 of which are located in the United States, and 24 parts depots worldwide, including 20 in this country. (JA2980-82; SPA2-3.) Chrysler has some 1,300 suppliers and an expansive network of more than 3,200 dealers in the United States. (JA2957-58; Stay App. 3a.)

A liquidation instead of going forward with the Fiat Sale would mean the immediate loss of 38,500 Chrysler jobs in the United States. Chrysler's thousands of workers and retirees would forfeit $9.8 billion of health care and other benefits and $2 billion in annual pension payments. All 23 of Chrysler's manufacturing facilities and 20 parts depots in the United States would shut down, as well as 18 additional plants and parts depots worldwide. Chrysler's 3,200 dealers would also be put out of business and the 140,000 employees of those dealerships would lose their jobs. Further still, auto parts and service supplier invoices will lose a critical

operating customer and consequent source of contract revenue, which likely would shut down hundreds of suppliers and eliminate several hundred thousand more jobs. (JA2974-75.)

And not only Chrysler is at risk. According to the Center for Automotive Research ("CAR"), if at least one of the three major American automakers fails in 2009, the United States economy could lose nearly 2.5 million jobs this year—239,341 at Chrysler, GM, and Ford—795,371 supplier/indirect jobs, and over 1.4 million other jobs.[2] The effect in those cities where the automotive industry is centered (the Great Lakes region and the Southern U.S.) would be particularly devastating. But the effect will not be localized. If the industry collapses, CAR estimates that during the first three years following the collapse, $65 billion in personal income taxes and $55 billion of social security receipts will be lost. (JA2974-75.)

It is difficult to overstate the problems a liquidation would create for families, schools and communities around the country. Tax revenues would plunge while social service resources would strain to meet the public's needs. These are precisely the systemic adverse economic consequences that chapter 11 is intended to prevent, by providing a debtor with the tools to preserve its business as a going concern. *See* 7 Collier on Bankruptcy ¶ 1100.01 ("Chapter 11 embodies a policy that it is generally preferable to enable a debtor to continue to operate[, which] can save the

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[2] David Cole & Sean McAlinden & Kristin Dziczek & Debra Maranger, *CAR Research Memorandum: The Impact on the U.S. Economy of a Major Contraction of the Detroit Three Automakers*, Center for Automotive Research, Nov. 4, 2008.

jobs of employees, the tax base of communities, and generally reduce the upheaval that can result from termination of a business.").

In similar contexts, courts have recognized the breadth of the public interest that may be at stake. In the *TWA* bankruptcy, for example, the court denied a request to stay a sale order pursuant to § 363 of the Bankruptcy Code, explaining:

> [T]here is a substantial public interest in preserving the value of TWA as a going concern and facilitating a smooth sale of substantially all of TWA's assets to American. This includes the preservation of jobs for TWA's 20,000 employees, the economic benefits the continued presence of a major air carrier brings to the St. Louis region, and preserving consumer confidence in purchased TWA tickets American will assume under the sale. . . . [T]he Sale Order implements the public interest that favors an organized rehabilitation (albeit here as only a part of a larger viable enterprise) of a financially distressed corporation which lies at the core of chapter 11. I conclude that the alternative to the Sale Order in this case is a free-fall chapter 11 leading to a liquidation with the subsequent substantial disruption of diverse economic relationships and likelihood of material adverse harm to a very broad spectrum of creditor constituencies.

In re Trans World Airlines, Inc., No. 01-00056, 2001 WL 1820326, at *14 (Bankr. D. Del. Apr. 2, 2001).

The public interest at stake here also goes far beyond that in *TWA*. *See In re Chrysler*, 2009 WL 1507547, at *9 (where the Bankruptcy Court found that "because of the overriding concern of the U.S. and Canadian governments to *protect the public interest*, the terms of the Fiat Sale present an opportunity that the marketplace alone could not offer") (emphasis added); *see also id.* at *17 ("The Governmental Entities have made the determination that it is in their respective national interests to save the automobile industry").

In sum, because a further stay of the Bankruptcy Court's Sale Order pending this Court's disposition of a certiorari petition that the Funds have not yet filed will inflict substantial and irreparable harm to Chrysler, its stakeholders, and the public interest at large—and, in the absence of a stay, the Funds will not suffer *any* harm—the Funds' stay application should be denied.

C. The Funds Have Not Shown That There Is a Reasonable Probability That Certiorari Will Be Granted

Apart from the threshold grounds for denying a stay upon a balance-of-harms analysis, the Funds have also not shown either that there is a reasonable probability that the Court will grant certiorari in this matter or that, if it were to grant the writ, that the Court would ultimately reverse the Second Circuit's judgment affirming the Stay Order.

1. The Sale Order Poses Fact-Intensive Issues That Were Affirmed by the Second Circuit on Clear-Error Review

A stay is typically denied where, as here, the lower court's order turns on fact-intensive issues already resolved against the applicant.[3]

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[3] *See Times-Picayune Pub. Corp. v. Schulingkamp*, 419 U.S. 1301, 1305 (1974) (Powell, J., in chambers) (denying application and expressing "reluctance, in considering in-chambers stay applications, to substitute my view for that of other courts that are closer to the relevant factual considerations that so often are critical to the proper resolution of these questions"); *Board of Ed. of City School Dist. of New Rochelle v. Taylor*, 82 S.Ct. 10, 10 (1961) (Brennan, J., in chambers) (denying application for stay because "the question which the petitioners claim is presented by the case . . . could be before this Court only if the Court overturned the factual findings concurred in by the two lower courts" and "[t]he petitioners have not suggested substantial reasons for believing that these findings would be held to be clearly erroneous"); *Block v. North Side Lumber Co.*, 473 U.S. 1307, 1307 (1985) (Rehnquist, C.J., in chambers) (denying application for a stay where the applicant "furnished [] no basis for disturbing [the lower courts'] conclusion in this highly factual issue"); *Aberdeen & Rockfish R.R. Co. v. Students Challenging Regulatory*

The Bankruptcy Court's decision in support of the Stay Order was predicated on a fact-intensive analysis under a multi-factor test used to determine whether, pursuant to § 363 of the Bankruptcy Code, a debtor "may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363. The Second Circuit's judgment, in turn, was rendered after conducting a deferential clear-error review of the Bankruptcy Court's findings. Specifically, after conducting a three-day hearing, the Bankruptcy Court found that there was the requisite "good business reason" under the applicable standard to grant the Debtors' motion for the Sale Order and supported that determination with detailed findings, including that

- "the Fiat Transaction is the only option that is currently viable";
- "the only other alternative is the immediate liquidation of the company" and "[a]ny material delay would result in substantial costs";
- the procedures used to determine which contracts would be assumed and assigned was "a reasonable exercise of the Debtors' business judgment"; and
- "the $2 billion New Chrysler is paying for the Debtors' assets exceeds the value that the First-Lien Lenders [including the Funds] could recover in an immediate liquidation."

Stay Opp. App. 17a-19a. The Bankruptcy Court's additional rulings that (i) the sale may be made free and clear of all liens pursuant to § 363(f) of the Bankruptcy Code

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Agency Procedures, 409 U.S. 1207, 1218 (1972) (Burger, J., in chambers) ("The criteria for granting a stay of the judgment of such a district court are stringent, at least when the necessity for a stay turns upon a refined factual evaluation of its effect."); *cf. Magnum Import Co. v. Coty*, 262 U.S. 159, 164 (1923) (Taft, C.J.) ("It is clear that the Court of Appeals gave full consideration to a similar motion and with a much fuller knowledge than we can have, denied it. As we have said, we require very cogent reasons before we will disregard the deliberate action of that court in such a matter.").

because the Funds consented to the Fiat Sale, and (ii) New CarCo Acquisition is a "good faith purchaser" in accordance with § 363(m) of the Code, are similarly supported by findings and detailed determinations based on the evidence adduced at the three-day hearing. (Stay App. 30a-31a; JA3117; JA3183.)

There is no "reasonable probability" that the Court will grant certiorari and review the Second Circuit's judgment affirming, on clear-error review, these and other findings by the Bankruptcy Court. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Indeed, in this case and others, the inquiry as to whether a § 363 sale of substantially all of a debtors' assets outside a plan should be permitted is a very fact-intensive application of the statutory language and long-established precedent, and, notwithstanding several petitions, this Court has never granted certiorari to review the propriety of an asset sale pursuant to § 363 of the Bankruptcy Code.[1] *See also* STERN & GRESSMAN, § 17.19(b), at 794 n.71 (noting that such concerns warrant

[1] *See White v. Collins*, *cert. denied*, 128 S.Ct. 1707 (2008) (denying certiorari in case approving non-plan sale of debtor assets under Sections 363(b) and 363(f)); *In re UAL Corp.*, 443 F.3d 565 (7th Cir. 2006), *cert. denied*, 127 S.Ct. 189 (2006) (approval of agreement under Section 363(b)(1)); *FutureSource, LLC v. Reuters Ltd.*, 312 F.3d 281 (7th Cir. 2002), *cert. denied*, 538 U.S. 962 (2003) (free and clear sale of debtor's assets under Section 363(f)); *In re Hurt*, No. 00-15088, 2001 WL 615282 (9th Cir. June 5, 2001), *cert. denied*, 122 S.Ct. 921 (2001) (approved sale of debtor properties under § 363(b)); *In re Rickel Home Centers, Inc.*, 209 F.3d 291 (3d Cir. 2000), *cert. denied* 121 S.Ct. 175 (2000) (debtor-in-possession's sale of shopping mall leases under Sections 363, 365(a) and 365(f)); *In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996), *cert. denied*, 117 S.Ct. 1251 (1997) (free-and-clear sale of successor liabilities pursuant to Sections 363 and 365); *Rodriguez v. Urban Brands*, 167 P.R. Dec. 509 (P.R. 2006), *cert. denied*, 549 U.S. 1113 (2007) (sale of assets to affiliate under Section 363(f)).

denial of a stay application); *S. Park Indep. Sch. Dist. v. United States*, 453 U.S. 1301, 1303-04 (1981) (Powell, J., in chambers).

The Funds try to make it appear as if the Bankruptcy Court invoked some unprecedented procedure to permit Chrysler to sell its assets before confirming a plan of reorganization. That is simply not true. As Justice Breyer has recently noted: "[O]ne major reason why a transfer may take place before rather than after a plan is confirmed is that the preconfirmation bankruptcy process takes time. . . . And a firm (or its assets) may have more value (say, as a going concern) where sale takes place quickly. . . . Thus, an immediate sale can often make more revenue available to creditors or for reorganization of the remaining assets." *Florida Dept. of Revenue v. Piccadilly Cafeterias, Inc.*, 128 S. Ct. 2326, 2330 n.2 (2008) (Breyer, J., dissenting on a different issue—whether, under § 1146(a) of the Bankruptcy Code, a tax-stamp exemption could be granted in conjunction with a § 363 sale). That case was one of many examples of courts approving asset sales outside the normal plan process to preserve the going-concern value of the debtor's business.[5]

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[5] *See, e.g., In re Decora Indus., Inc.*, No. 00-4459, 2002 WL 32332749, at *3 (D. Del. May 20, 2002) (approving 363(f) sale of substantially all assets of chapter 11 debtor that had no source of future financing: "Debtors have two alternatives: (1) proceed with the Proposed Transaction, or (2) terminate business operations, employees and commence a liquidation of assets. . . . All parties agree that an asset sale, as opposed to liquidation, will provide more money to the estate to satisfy the creditors' claims, as well as maintaining the going concern value of Debtors. . . ."); *In re Med. Software Solutions*, 286 B.R. 131, 141 (Bankr. D. Utah 2002) (court approved sale of essentially all of debtor's assets at outset of chapter 11 case); *In re Naron & Wagner, Chartered*, 88 B.R. 85, 90 (Bankr. D. Md. 1988) (approving sale of operating subsidiary where purchase price exceeded its estimated liquidation value and "failure to close the sale quickly will likely result in a halt of [subsidiary]'s continuous operations. If [subsidiary] cannot be sold as a going concern, there will

That is precisely why the Bankruptcy Court approved the sale here. On the basis of well-supported findings that are not clearly erroneous, the Court determined that Chrysler would provide more value to its creditors ($2 billion) if the Fiat Sale takes place now than under the only other viable alternative for the company pursuant to which no other bidder would step forward to purchase the company's assets and Chrysler would thus be forced to liquidate for far less value (from $0 to, at most, $800 million) as part of the bankruptcy plan process. (Stay App. 27a-29a; JA1742-43; JA1747-48; JA1935; JA2926-43.)

None of the issues that the Funds say they will raise in their certiorari petition changes this analysis. The Funds contend that "the First Lien Lenders' claims are properly valued at $6.9 billion." (Stay Motion at 18.) But this is sheer speculation that the Bankruptcy Court did not adopt, and for good reason. After Chrysler spent nearly two years literally spanning the globe trying to find a buyer and then, upon filing for bankruptcy, the Bankruptcy Court adopted a procedure after giving notice and an opportunity to be heard whereby buyers other than Fiat could step forward and bid against Fiat, *no other bidder stepped forward with any offer* let alone one anywhere close to the range of $6.9 billion.

The Funds also falsely treat New CarCo Acquisition as the Debtors as a predicate for their arguments that "Chrysler" is improperly making distributions to subordinated creditors in circumvention of the plan process or effecting a "reorganization" with the Fiat Sale. (*See* Stay Motion at 7). Again, this cannot be

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be a substantial decrease in its value to the Debtor's estate.").

squared with the record. New CarCo Acquisition is not a debtor, and it is not distributing the Debtors' property outside the context of bankruptcy. The Debtors' property is the $2 billion in cash that they will receive from the Fiat Sale and *all of that amount is going to the First Lien Lenders*, including the Funds, in complete compliance with the Bankruptcy Code's principles of priority of liens. (JA2287-2303; JA3117; JA3125; JA3183.) After the Fiat Sale, New CarCo Acquisition will sell vehicles manufactured at *its* plants and by *its* employees. (JA2287-2303.) New CarCo Acquisition's property will not be the Debtors' property. There will be, simply, no distribution of the Debtors' property by New CarCo Acquisition, who will have purchased certain bargained-for assets of the Debtor assets as a going concern in exchange for $2 billion that, as collateral proceeds, will be subject to the attachment of the lien securing the First Lien Credit Agreement and distributed to the Lenders. (*Id.*)

For all of these reasons, the Bankruptcy Court's order does not present any issues on which the Court would be likely to grant certiorari, but only fact-intensive issues that have been properly affirmed by the Second Circuit on its clear-error review.

2. The Court Is Unlikely to Grant Cert. on Any Issues Concerning the Source of the Funding for the Sale

The Funds also state that they will ask the Court to review the lower court's treatment of whether the U.S. Treasury may use money from the Troubled Asset Relief Program, or TARP, to fund the Fiat Sale. But, for several reasons, this case

is not a good vehicle for addressing the issues that the Funds say they will present in their certiorari petition.

First, while the Funds have challenged whether the Government may use TARP funds for the sale, that issue is poorly presented by this case. As Chief Judge Jacobs pointed out at oral argument before the Second Circuit, what the Funds actually want is for the Government to use *more* TARP money to fund the Fiat Sale. The Funds have made quite clear that they do not want Chrysler to be liquidated. (A1698-99, where the Funds' counsel denied that they want a liquidation and stated "we want to capture more of the value associated with our collateral. . . . We have no problem with the sale.") And because, as the Bankruptcy Court found, "the only other alternative [to the Fiat Sale] is the immediate liquidation of the company," the Funds' real complaint amounts to that the Government should be paying *more* to fund the Fiat Sale which would, in turn, provide more money to the lenders, such as the Funds, under the First Lien Credit Agreement. As the Bankruptcy Court summarized this problem with the Funds' argument:

> [T]he Indiana Funds argue that the U.S. Treasury acted unlawfully by providing TARP funds to the Debtors and New Chrysler, but premise most of their other arguments and development of the record by maintaining that more TARP funds should have gone to them. In essence, their position is that the U.S. Treasury's alleged unlawful acts did not benefit them enough; therefore, they object.

(Stay Opp. App. 35a, n.23). In this posture, where the Funds have an interest concerning the use of TARP funds that is—at bottom—not adverse to the Debtors, New CarCo Acquisition, Fiat, the UAW, or the governments of the United States and Canada, the Court is unlikely to review the "issue" that the Funds have raised

concerning TARP funds. *Cf. Flast v. Cohen*, 392 U.S. 83, 100-01 (1968) ("[T]he question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.").

Second, as the Bankruptcy Court also held, the Funds do not have standing to challenge the Government's use of TARP funds. *See Bailey v. Patterson*, 368 U.S. 346, 346-47 (1961) (per curium) (denying motion for a stay where, "[i]n addition to the considerations normally attending an application for such relief, a serious question of standing is presented on this motion"). The Funds ignore this significant vehicle problem in their application, notwithstanding that it was the subject of exhaustive briefing before the Second Circuit and the Bankruptcy Court. But the Funds cannot show any injury in fact properly traceable to the government, because, as the Bankruptcy Court held, the Funds have *consented to* the Fiat Sale under the express terms of the First Lien Credit Agreement. (Stay Opp. App. 25a – 27a.) *See McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 228 (2003) (stating plaintiffs "cannot show that their alleged injury is 'fairly traceable'" to the statute at issue because their alleged inability to compete stems not from the operation of the statute, "but from their own . . . personal choice"). Further, due to the government's agreement to fund the Fiat Sale, the lenders under the First Lien Credit Agreement are receiving a *premium*. The Funds cannot establish that the government has caused them any "injury" by the use of TARP funds when, without the government's

agreement to fund the Fiat Sale, the Funds would be much worse off under a liquidation scenario. Nor can the Funds establish the third prong of standing—redressability by a favorable decision—as the Government's obligation to fund the Fiat Sale is *not* tied to TARP funds.

Third, even if the Funds could overcome this significant standing problem, the statutory scheme does not permit them to challenge the Treasury Secretary's authority under TARP in order to block a sale in a bankruptcy court—as they tried to do here. The Treasury Secretary's actions pursuant to the Emergency Economic Stabilization Act of 2008, which established TARP, are subject to judicial review pursuant to the procedures set forth in the Administrative Procedure Act, under which, as EESA expressly notes, any challenge to agency action is subject to deferential "arbitrary and capricious" review in federal court. 12 U.S.C. 5229(a)(1).

The Funds did not bring an administrative challenge to the Treasury Secretary's use of TARP funds in connection with the Fiat Sale. Instead, they first raised their challenge to the Secretary's authority in an attempt to block the sale of Chrysler's assets in the Bankruptcy Court. EESA expressly provides, however, that, "other than to remedy a violation of the Constitution," a federal court may not enter an injunction "or other form of equitable relief" against the Secretary for, *inter alia*, making commitments to purchase with TARP funds. *See* 12 U.S.C. § 5229(a)(2)(A) (providing that this ban on injunctions applies to the Secretary's action pursuant to, *inter alia*, § 5211 of EESA, which provides the authority for establishing TARP). The Funds contended that they fit within the exception to this

provision because the use of TARP funds somehow effects an unconstitutional "taking" of "property" under the Fifth Amendment. But, as the Funds conceded at oral argument in the Second Circuit—and as the Bankruptcy Court expressly held—the Funds are claiming violation of a *contractual right* to the distribution of certain proceeds from execution on a lien. The Funds do *not* hold the lien under the First Lien Credit Agreement, and thus do not have any property right under this agreement that can be "taken" by the federal government within the meaning of the Fifth Amendment. *See United States v. Security Industrial Bank*, 459 U.S. 70, 75 (1982) (drawing distinction between "the contractual right of a secured creditor to obtain repayment of his debt," modification of which does *not* give rise to a takings claim, and the "property right of the same creditor in the collateral" (i.e., the lien), modification of which could).

Finally, even putting to one side these myriad vehicle problems, the putative issue of statutory construction that the Funds raise concerning the statutory definition of a "financial institution" is not one that would warrant review by the Court. As discussed in more detail directly below, the Funds do not even have a colorable argument under the plain language of EESA. Moreover, at a bare minimum, the Court would not likely grant certiorari to review this issue in the absence of even a *single decision* by a court of appeals addressing it—let alone a circuit split. *See* STERN & GRESSMAN, § 4.3, at 229.

For all of these reasons, the issues that the Funds say they intend to raise in their certiorari petition regarding the Treasury Secretary's use of TARP funds are

not reasonably likely to be reviewed by the Court and do not warrant the extraordinary remedy of a stay.

D. There Is Not a Significant Probability that a Majority of the Court Will Determine That the Second Circuit's Judgment Is Erroneous

Finally, the Funds have not shown there is a significant probability that, *if* the Court were to grant their forthcoming petition for certiorari, the Court would ultimately determine that the Second Circuit's judgment is erroneous.

As stated above, the Court is unlikely to disturb the Bankruptcy Court's fact finding and the Second Circuit's affirmance, on clear-error review, of those findings. Nor does the Bankruptcy Court's application of legal rules present issues that are likely to be reviewed in this Court or, if reviewed, result in a reversal of the Second Circuit's judgment. The Bankruptcy Court made its detailed findings upon the application of well-established principles of law. The Funds' contentions to the contrary are based on a mischaracterization of the record before the Bankruptcy Court and speculation that is unsupported by any actual proof.

As to the TARP issue raised by the Funds, not only do all of the vehicle problems above – including the Funds' lack of standing – likely pose an insurmountable barrier to obtaining review in this Court. But the Funds are simply wrong on the merits that the Secretary lacks authority to use TARP funds in connection with the Fiat Sale. The Funds claim that Chrysler does not meet the definition of a "financial institution" under EESA and that, therefore, the Treasury Secretary was not permitted to use TARP funds in connection with the Fiat Sale. But, although this is the first so-called "precise legal issue" that the Funds contend

is cert.-worthy, they conspicuously never cite the actual statutory language in their application. (Stay Motion at 14.) The term "financial institution" is a term of art in EESA, however. It is defined broadly in the statute to include *any institution* established and regulated under the laws of the federal government or the states:

> The term "financial institution" means *any institution, including, but not limited to*, any bank, savings association, credit union, security broker or dealer, or insurance company, *established and regulated under the laws of the United States or any State*, territory, or possession of the United States . . . and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government.

12 U.S.C. § 5202(5). Chrysler and all of the Debtors readily meet the plain language of this definition: they are institutions established under the laws of various states and are also regulated, quite extensively, under the laws of the federal government and the states.

The Funds go on at some length in their application about statements by individual legislators and the Secretary of the Treasury concerning EESA and its breadth, but they never even try to explain why, under the plain language of the statute that Congress actually enacted, Chrysler and the Debtors do not fit within the broad definition of "financial institutions" in EESA. Especially in light of all of the threshold vehicle issues discussed above that are likely to warrant denial of certiorari or preclude consideration of the merits of this statutory construction issue, there is not a significant probability that the Court will ultimately reverse the lower courts' determination.

II. IN THE ALTERNATIVE, THE STAY SHOULD BE DENIED BECAUSE THE FUNDS HAVE NOT OFFERED TO POST AN ADEQUATE BOND

Not only have the Funds failed to establish any of the requirements for obtaining a stay, but they have also *entirely ignored* the issue of an adequate bond to protect the Debtors. The Funds hold approximately $42 million of first-lien claims and are seeking to recover some unspecified, unproved, and wholly speculative amount in excess of the $12.2 million they will receive if the Fiat Sale goes forward as approved by the Bankruptcy Court and the Second Circuit. The Funds should not be permitted to kill a $2 billion sale of Chrysler's assets—and force a liquidation of the company that will result in more than a billion dollars of losses—without posting a bond to protect Chrysler and its stakeholders in the very likely event that either their forthcoming certiorari petition is denied or, if granted, the Second Circuit's judgment is affirmed.

Under 21 U.S.C. 2101(f), the Court may condition a stay on the posting of a bond that will answer for "all damages" caused by reason of a stay:

> The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be condition on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ [of certiorari] with the period allotted therefore, or fails to obtain an order granting the application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

See also Sup. Ct. R. 23.4. In accordance with this rule, Justices deciding stay applications routinely condition the granting of a stay on the posting of an adequate bond.[6]

The Funds, however, never even mention in their motion posting an adequate bond to protect Chrysler and its stakeholders against the enormous harm to them if a stay is granted and the Court either does not grant certiorari or, if it does, ultimately affirms the Second Circuit's judgment. As noted, if a stay in this Court were to stop the sale and force a liquidation of Chrysler, the damages to Chrysler and its stakeholders will be, at least, ***$1.2 billion*** – a figure that does not even include damages caused by the loss of jobs and related losses in the supplier and other industries that would be affected by what would be, in these circumstances, a devastating liquidation of the company.

While the Funds' application for a stay should be denied for all of the reasons set forth above, even assuming that a stay were to be entered here it should thus be conditioned on the Funds posting a bond in at least the amount of $1.2 billion to protect Chrysler against damages that would be caused by a stay. *See In re Calpine Corp.*, No. 05-60200, 2008 WL 207841, at * 6-7 (Bankr. S.D.N.Y. Jan. 24, 2008) (requiring bond of $900 million to cover "aggregate additional interest expense the

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[6] *See, e.g., Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 548 U.S. 936, 936 (2006) (per curium); *Modjeski & Masters v. Carter*, 485 U.S. 1031, 1031 (1988) (White, J., in chambers); *Brewick & Co. v United States*, 75 S. Ct. 912, 915 (1955) (Harlan, J., in chambers) (requiring a bond of the "greatest possible exposure to loss pending appeal" after expressing concern with "whether the [opponents to the stay application] can be adequately indemnified against [] damage pending appeal").

Debtors could suffer if they were unable to close their existing exit financing"); *ACC Bondholder Group v. Adelphia Commc'ns Corp. (In re Adelphia Commc'ns Corp.)*, 361 B.R. 337, 347 (S.D.N.Y 2007) (requiring supersedeas bond of $1.3 billion).

The Funds have already had their appeal as of right, and the Second Circuit went to extraordinary lengths to permit that appeal without threatening to disrupt the sale of substantially all of Chrysler's assets before the drop-dead date of June 15, 2009. If they are to be permitted any further discretionary process in addition to that which they have already been afforded as of right by the Second Circuit and the Bankruptcy Court, they should be required to post an adequate bond to protect Chrysler and its stakeholders against the damage that will very likely ensue if a stay were granted here.

III. THE BANKRUPTCY COURT'S APPROVAL OF THE DEBTORS' ASSETS FREE AND CLEAR OF TORT CLAIMS DOES NOT WARRANTS REVIEW

The tort claimants also seek a stay pending review of their petition for certiorari. As with the Funds, however, the tort claimants cannot show irreparable injury and have not presented any issues on which the Court is likely to grant certiorari or, if it did, to reverse.

Any present and future tort claimants are not in any worse position than they would be if Chrysler were liquidated.[7] As with the Funds, the tort claimants

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[7] While New Chrysler has agreed to assume certain pre-existing liabilities of the Debtors specified in Section 2.08 of the Purchase Agreement, including liabilities for product warranties, product returns and rebates on vehicles sold by the Debtors, the Purchase Agreement provides in Section 2.09 that the assets being purchased exclude "all Product Liability Claims arising from the sale of Products or Inventory prior to the Closing" and "all Liabilities in strict liability, negligence, gross negligence or recklessness for acts or omission arising prior to or ongoing at

therefore cannot show any irreparable harm in the absence of a stay. Whether Chrysler is liquidated or the Fiat Sale goes forward – the only two viable choices facing Chrysler – the fact is that no general unsecured creditors, including tort claimants, are likely to receive any money because there are secured creditors ahead of them with billions of dollars in unmet claims.

The Court is also not likely to grant review on this issue. Under Section 363(f) of the Bankruptcy Code, a court may order that a sale of assets is free and clear of all "interests in property." Although that phrase is not defined in the Code, the Bankruptcy Court correctly concluded that it extends beyond *in rem* interests such as liens to encompass *in personam* claims, including tort claims. (*See* SPA 42-13.) That conclusion is consistent with this Court's precedent, and there is also no circuit split on the issue.

The bankruptcy court properly followed the Third Circuit's reasoning in *In re Trans World Airlines, Inc.*, 322 F.3d 283 (3d Cir. 2003) ("*TWA*"), which "makes clear that such tort claims are interests in property such that they are extinguished by a free and clear sale under section 363(f)(5) and are therefore extinguished by the Sale Transaction." (SPA 42) (citing *TWA*, 322 F.3d at 289). There is no other decision from another court of appeals that takes the opposite view. Moreover, the narrow reading of § 363 urged by the tort claimants flies in the face of a clear "trend [in the courts] . . . toward a more expansive reading of 'interests in property' which

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the Closing." The term "Product Liability Claim" is expansively defined in the Definitions Addendum to the Purchase Agreement.

'encompasses other obligations that may flow from ownership of the property.'" *TWA*, 322 F.3d at 289 (quoting 3 COLLIER ON BANKRUPTCY 363.06[1]).[8]

Nor is there any likelihood that the tort claimants could persuade this Court that the Bankruptcy Court's analysis is wrong. Indeed, if the claims at issue were to attach to the assets in the hands of New CarCo Acquisition, as the tort claimants content they should, then they must be "interests in property" within the meaning of § 363(f). Given the complete absence of overlapping equity ownership between Chrysler and New CarCo Acquisition, there is no basis other than New CarCo Acquisition's ownership of those assets on which to hold it liable for tort claims allegedly arising from Chrysler's conduct. That is why the Bankruptcy Court was correct in holding that such tort claims are "extinguished by the Sale Transaction." (SPA 12.)

The Bankruptcy Court also properly overruled objections to the Fiat Sale from consumer advocacy groups on the ground that future tort claimants were not given adequate notice. Here again, the Court is not likely to review the lower court's application of notice principles to the specific facts of the notice given here. The notice of the proposed sale was published in newspapers with very wide circulation – such as *USA Today*, *The Wall Street Journal* and *The New York*

[8] The tort claimants' reliance Section 1141(c) of the Bankruptcy Code to argue that interests in property must exclude tort claims is misplaced. That provision, which refers to "creditor[s], equity security holder[s], and . . . general partners in the debtor," uses the term "claims" to distinguish between the interests of creditors, on the one hand, and those of equity security holders and general partners, on the other hand, whose interests ordinarily cannot be properly described as "claims." Section 363(f), in contrast, refers to "any interest property," subsuming claims that are connected to the assets being sold.

Times, as well as the U.S., European and Asian editions of *Automotive News* and *The Financial Times*. (Stay App. 24a.) It expressly stated in paragraph 1 that the Debtors were seeking authority to sell substantially all of their assets to Purchaser "free and clear of all liens, claims, interests and encumbrances." As this Court has held—and the Bankruptcy Court acknowledged—such publication notice is constitutionally sufficient to provide notice to claimants "whose interests or whereabouts could not with due diligence be ascertained." *Mullane* v. *Cent. Hanover Bank & Trust Co.*, 399 U.S. 306, 317 (1950). Moreover, entities purporting to speak on behalf of future tort claimants participated in the Bankruptcy Court's hearing and voiced objections to the Fiat Sale, which shows that these claimants were plainly provided with adequate notice and had their concerns heard by the bankruptcy court.

Further still, as this Court held in *In re 620 Church Street Building Corp.*, 299 U.S. 24 (1936), the amount of process due to creditors of a bankrupt entity is a function of the value of their claim: "Petitioners insist that their consent to the plan of reorganization was necessary or that their claims should have been accorded 'adequate protection' . . . . Here the controlling finding is not only that there was no equity in the property above the first mortgage, but that petitioners' claims were appraised by the court as having 'no value.' There was no value to be protected [and] petitioners have not shown injury." *Id.* at 27.[*] As with any unsecured

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[*] As the Second Circuit noted in *In re Hotel Governor Clinton, Inc.*, 96 F.2d 30, 32 (2d Cir. 1938), "[t]here is an obvious distinction between depriving a lienor of the right to foreclose a security without giving him equivalent value . . . and refusing

creditor of Chrysler, the future tort claimants have no realistic prospect of recovering anything on their claims. The unfortunate but unavoidable fact is that future tort claimants who will have claims against the Debtors based on vehicles manufactured by Chrysler simply have no value to be protected.

Accordingly, just as with the Funds, because the price paid by New CarCo Acquisition for the Fiat Sale exceeds Chrysler's liquidation value, creditors stand to gain more from the Fiat Sale than any other viable alternative. For both past and future tort claimants, their claims are valueless under either scenario. Accordingly, the "irreparable harm" that they claim will ensue in the absence of a stay is entirely the product of the economic collapse of Chrysler. It has nothing to do with the Fiat Sale or the Bankruptcy Court order approving it. The tort claimants' application for a stay should therefore be denied.

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him foreclosure when the lien is concededly worthless."

CONCLUSION

The applications for a stay should be denied.

Respectfully submitted.

/ s / Thomas F. Cullen

THOMAS F. CULLEN
(Counsel of Record)
GREGORY M. SHUMAKER
JONES DAY
51 Louisiana Ave., N.W.
Washington, DC 20001
(202) 879-3900

CORINNE BALL
TODD R. GEREMIA
JONES DAY
222 East 41st Street
New York, New York
10017
(212) 326-3939

Counsel for Respondents Chrysler LLC et al.

Dated: June 7, 2009

No. _____

IN THE

Supreme Court of the United States

IN RE CHRYSLER LLC, DEBTOR

INDIANA STATE POLICE PENSION TRUST, INDIANA STATE TEACHERS RETIREMENT FUND, INDIANA MAJOR MOVES CONSTRUCTION FUND,

Petitioners,

V.

CHRYSLER LLC, AKA CHRYSLER ASPEN, AKA CHRYSLER TOWN & COUNTRY, AKA CHRYSLER 300, AKA CHRYSLER SEBRING, AKA CHRYSLER PT CRUISER, AKA DODGE, AKA DODGE AVENGER, AKA DODGE CALIBER, AKA DODGE CHALLENGER, AKA DODGE DAKOTA, AKA DODGE DURANGO, AKA DODGE GRAND CARAVAN, AKA DODGE JOURNEY, AKA DODGE NITRO, AKA DODGE RAM, AKA DODGE SPRINTER, AKA DODGE VIPER, AKA JEEP, AKA JEEP COMMANDER, AKA JEEP COMPASS, AKA JEEP GRAND CHEROKEE, AKA JEEP LIBERTY, AKA JEEP PATRIOT, AKA JEEP WRANGLER, AKA MOPER, AKA PLYMOUTH, AKA DODGE CHARGER; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO ("UAW"), FIAT SPA. AND FIAT S.P.A. AND NEW CARCO ACQUISITION LLC, UNITED STATES OF AMERICA, EXPORT DEVELOPMENT CANADA, CHRYSLER FINANCIAL SERVICES LLC, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

Respondents.

ON APPLICATION FOR IMMEDIATE STAY OF SALE ORDERS ISSUED BY THE BANKRUPTCY COURT

DIRECTED TO HONORABLE RUTH BADER GINSBURG, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RESPONSE OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO APPLICATION FOR IMMEDIATE STAY OF SALE ORDERS ISSUED BY THE BANKRUPTCY COURT

KRAMER LEVIN NAFTALIS & FRANKEL LLP
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100
THOMAS MOERS MAYER
KENNETH H. ECKSTEIN
JEFFREY S. TRACHTMAN
(Counsel of Record)

Counsel for the Official Committee of Unsecured Creditors of Chrysler LLC, et al.

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The Official Committee of Unsecured Creditors (the "Creditors' Committee") of the above-captioned debtors and debtors-in-possession (the "Debtors") hereby submits this Response to the application (the "Application") of the Indiana State Police Pension Trust, Indiana State Teachers' Retirement Fund, and Indiana Major Moves Construction Fund (the "Indiana Funds") seeking a stay, pending filing of a petition for a writ of certiorari, of the order of the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") approving the sale of Chrysler's assets (the "Sale Order").

The Creditors' Committee, in its capacity as a fiduciary for a broad cross-section of Chrysler constituencies, including workers, suppliers, dealers, tort creditors, and other unsecured creditors of the Debtors' estates, supports the Chrysler asset sale and opposes any stay that threatens to prevent the sale from closing, as it must, by June 15, 2009. The balance of harms tilts so overwhelmingly against a stay that the Application should be denied on this ground alone. Moreover, the Committee believes that this Court is unlikely to grant a writ of certiorari or, if a writ is granted, to reverse the Sale Order, further arguing against a stay. The Indiana Funds, which represent a tiny fraction of Chrysler's secured debt, have received the appellate review to which they are entitled and should not be permitted to jeopardize the recovery of the overwhelming number of secured and unsecured creditors who understand that this transaction represents the best possible outcome for <u>every</u> Chrysler constituency. The Application for a stay thus should be denied, since it is impossible for the Indiana Funds to post a supersedeas

bond large enough to remedy the harm that would result from a collapse of the sale transaction.

Statement

The Committee recognizes that the sale transaction approved by the Bankruptcy Court and challenged on appeal is not perfect. Indeed, it will leave impaired parties within the Committee's constituency. But the challenged transaction is the only alternative to a far worse economic and human disaster.

The absence of any viable competing bids for — or even indications of serious interest in acquiring — Chrysler's businesses presented the Bankruptcy Court with two stark alternatives: approve the proposed sale transaction (by granting the "Sale Motion") to preserve the going-concern value of the Debtors' businesses and maximize substantial value for stakeholders and for the country (despite the unfortunate, but circumscribed, pain and dislocation it will cause to certain constituencies), or reject the transaction and precipitate the immediate liquidation of Chrysler and its assets to the detriment of all involved. The latter course would cause exponentially larger financial and collateral social consequences flowing from the complete disappearance of Chrysler's businesses. The Bankruptcy Court, and the Second Circuit on appeal, both correctly concluded that there was only one choice here: to preserve these businesses as a going concern — the very purpose underlying section 363 of the Bankruptcy Code, which authorizes the sale of a debtor's assets outside of a plan process in chapter 11 cases.

The same choice confronts this Court. A stay that prevents the sale transaction from closing on June 15 will inflict disastrous consequences not just on

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every Chrysler constituency but on the United States as a whole, as the liquidation of this iconic company ripples through community after community causing the failure of suppliers, dealers, and others whose livelihoods depend on the existence of Chrysler as a going concern. The balance of harms thus tilts dramatically against any further stay of the Sale Orders. Indeed, the Indiana Funds will not even suffer any harm because denial of the stay and consummation of the transaction will result in their receiving more on account of their secured claims than they could possibly otherwise recover through liquidation — which is why the overwhelming majority of secured and unsecured creditors supported the sale in the Bankruptcy Court. This factor alone militates decisively against granting a stay.

But the Indiana Funds are also unable to demonstrate either a "reasonable probability" that they will obtain a grant of certiorari or a "fair prospect" of reversal on the merits. See Conkright v. Frommert, 129 S. Ct. 1861, 1861-62 (2009) (Ginsburg, Circuit Justice). Their attacks on the sale transaction center on the assertion that it constitutes a sub rosa attempt to short circuit the requirements and protections of the Chapter 11 plan process to effect inappropriate transfers of value from Chrysler's First Lien lenders to preferred unsecured constituencies. The Indiana Funds argue that this is being accomplished by selling Chrysler's assets at an artificially depressed bargain-basement "liquidation" value of $2 billion, while pre-petition unsecured creditors are being paid out of Chrysler's assets on a "going concern" basis — supposedly diverting value that could have been used to pay a higher percentage of the First Lien debt.

This is, to put it kindly, nonsense. All of the Indiana Funds' bankruptcy law theories for reversal collapse in the face of one fact: Chrysler's assets are being sold at the highest available going concern value, following an exhaustive, world-wide marketing effort and an open, court-supervised auction process. The $2 billion being brought into the estates and earmarked to pay First Lien creditors like the Indiana Funds is the highest and best price that could be obtained for the assets securing that debt. The much larger "going concern" value that the Indiana Funds cite from Chrysler's hopeful projections was based on a key assumption that proved false: that the United States Treasury (the "Treasury"), Chrysler's lender of last resort, would agree to fund a stand-alone reorganization. Once it became clear that the sale to a new company controlled by Fiat was the only alternative to liquidation, previous hypothetical stand-alone valuations became obsolete.

This sale transaction thus falls squarely within the parameters of permissible, indeed necessary, asset sales under section 363 of the Bankruptcy Code. Although the size and scope of the businesses involved are unprecedented, the relief requested — a section 363 sale of a going concern business prior to a plan to maximize and preserve rapidly declining business values — is not unusual. Rather, this is a fairly straightforward going concern sale like those commonly approved in bankruptcy courts around the nation. Significantly, as the Bankruptcy Court found based on uncontroverted evidence, the only alternative to the asset sale transaction is an immediate liquidation of Chrysler, which will result in every

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single constituency — including the secured lenders — receiving dramatically less than they will as a result of the sale. This is the very paradigm of a section 363 sale necessary to preserve value of the estate. A tiny minority of creditors should not be permitted to jeopardize this result.

Moreover, it is common and expected for a going concern purchaser to seek and obtain agreements with the business's workforce, key suppliers, key contract parties, and other entities that are essential to the ongoing operations of the business being purchased. That such agreements provide for the assumption of liabilities and the satisfaction of certain prepetition claims is not sinister: it is an ordinary and predictable consequence of the purchaser's need to assure that the business operates effectively going forward — and entirely consistent with the Bankruptcy Code. Nor does the distribution of equity interests in the new Chrysler entity to creditors constitute a payment on account of prepetition claims — rather, these parties are being compensated for contributions they will make to the new, separate company. None of this represents a diversion of value from the estates' assets. And the sale in and of itself does not dictate the valuation or treatment of claims; indeed, both assets and liabilities will be left behind in the old Chrysler entity to be further treated in connection with a liquidation plan process.

For all these reasons, the proposed Sale does not constitute a sub rosa plan of reorganization. Nor does it violate the priority scheme of the Bankruptcy Code, or conflict with any of the other Bankruptcy authorities cited in the Application: to the contrary, it meets the familiar, well-established requirements of

section 363(b) of the Bankruptcy Code. Moreover, as the Debtors will demonstrate in their response, the Indiana Petitioners lack standing to complain about where the Treasury, functioning as a lender and equity participant in the entity purchasing Chrysler's assets, obtained the money it is lending to finance the new company. In short, there is no reason for this Court to grant certiorari or reverse the Sale Orders, and thus absolutely no basis to grant an additional stay that will place the closing of this transaction in jeopardy.

Background Facts

A. The Proposed Sale Transaction

As explained in the Sale Motion, as of April 30, 2009, certain of the Debtors (collectively, "Old Chrysler") entered into a Master Transaction Agreement (the "MTA"), with Fiat S.p.A. and New Carco Acquisition LLC ("New Chrysler"). Pursuant to the MTA, Old Chrysler seeks to sell substantially all of its assets (the "Sale") to New Chrysler, including more than twenty manufacturing facilities, accounts receivable, inventory, leased property, the rights under assumed contracts, the equity interests of certain wholly owned subsidiaries, intellectual property, and certain avoidance actions under sections 544 through section 553 of the Bankruptcy Code (other than specified excluded assets, the "Purchased Assets"). See JA 3220-23 (MTA §§ 2.06, 2.07).[1] In exchange for the Purchased Assets, New Chrysler has

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[1] Citations to Stay App.__ are to the Appendix filed with the Application. Citations to JA ____ are to the Joint Appendix submitted to the Court of Appeals. Citations to SPA ___ are to the Joint Special Appendix also submitted to the Court of Appeals.

agreed to pay Old Chrysler $2 billion in cash and assume more than $20 billion in liabilities, including certain environmental liabilities, warranty obligations, accounts payable, certain benefit plan liabilities, and post-closing products liability. See JA 3223-26 (MTA §§ 2.08, 2.09).

Among the contracts that are being assumed by New Chrysler are agreements with thousands of auto dealers, as well as agreements with numerous suppliers and vendors. The Sale further contemplates that Old Chrysler's collective bargaining agreement ("CBA") with the UAW (as defined below) be modified to reflect substantial union concessions (including an unprecedented six-year no-strike clause) and, as modified, assumed and assigned to New Chrysler. As a condition of entering the modified CBA, the UAW required that New Chrysler agree to support the health benefits of current and future retirees through new funding arrangements for the Voluntary Employee Benefits Association ("VEBA"), the sponsor for the retiree medical benefits plan for UAW-represented retirees. Among these arrangements, the UAW agreed to allow benefits to be funded in part through the contribution of a majority of the equity interests in New Chrysler rather than funding the VEBA only in cash. These types of arrangements are quite common when the businesses to be purchased operate under extensive union agreements with the workforce that constitutes the lifeblood of the business.

Moreover, New Chrysler demonstrated its ability to consummate the transaction and operate the businesses as a going concern through a credit facility separately provided for by the Treasury and Export Development Canada. Under

the terms of that loan, the Treasury will also receive a much smaller position in the equity of New Chrysler — all separate arrangements between New Chrysler and its lender that have nothing to do with the prepetition assets of the Debtors.

Given the deteriorating value of the Debtors' businesses, which are currently shut down due to lack of sufficient funding to operate, the MTA will terminate automatically if the Sale does not close on or before June 15, 2009. JA 3277-78 (MTA §§ 10.01(c) and (j)).

B. The Sale Process

On May 3, 2009, the Debtors filed a motion (the "Bid Procedures Motion"), seeking, among other things, the entry of an order establishing bidding procedures ("Bid Procedures Order") in connection with the Sale.

On May 5, 2009, the Office of the United States Trustee appointed the eleven-member committee of unsecured creditors in these chapter 11 cases. The Creditors' Committee's members constitute a broad cross-section of claimants in these cases, including suppliers Continental Automotive Systems, Inc., Cummins, Inc., Ohio Module Manufacturing Co., LLC, and Magna International, Inc.; dealers Zanetti Chrysler Jeep Dodge, DARCARS Imports, Inc., and AutoNation, Inc.; personal injury claimants Desiree Sanchez and Patricia Pascale; the International Union, United Automobile Aerospace and Agricultural Implement Workers of America (the "UAW"); and the Pension Benefit Guaranty Corporation ("PBGC").

On May 7, 2009, the Bankruptcy Court approved the Bid Procedures Order, establishing, inter alia, May 19, 2009, at 4:00 p.m., as the deadline for objecting to the Sale (the "Objection Deadline"); May 20, 2009 as the deadline for

submitting a competing bid (the "Bidding Deadline"); and May 27, 2009, at 10:00 a.m., as the date and time for a hearing concerning the approval of the Sale (the "Sale Hearing"). In accordance with the Bid Procedures Order, the Debtors provided extensive publication notice and direct notice to parties affected by the Sale. See [Docket Nos. 1255; 929; 930; 845].[2]

Following the entry of the Bid Procedures Order, the Debtors continued to actively solicit competing bids from various parties. Despite extensive efforts from the Debtors, no parties signed confidentiality agreements. No parties expressed a serious interest in making competing bids. No parties conducted due diligence concerning the Debtors' assets. The Bidding Deadline passed — and no parties submitted competing bids. The Indiana Funds suggest that the bidding deadlines were too tight to fairly test the market (Application at 10-11), but it is undisputed that Chrysler conducted an exhaustive, year long, international search for an alliance partner, which yielded only Fiat (JA 1747-48, 1751 (testimony of Thomas LaSorda)).

C. The Sale Hearing

The Sale Hearing commenced on Wednesday, May 27 and continued over three marathon days — with the Bankruptcy Court hearing live testimony from 12 witnesses, receiving approximately 40 exhibits, and permitting extensive cross-examination and argument that extended the hearing transcript to 1379

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[2] Unless otherwise noted, citations to the docket are to the Bankruptcy Court docket.

pages. The Bankruptcy Court received uncontradicted declarations and live testimony from top executives of the Debtors, their chief financial advisor, and others establishing beyond reasonable dispute that the Sale presents the only available alternative to liquidation of Chrysler's business. See JA 913 (Manzo Decl. ¶ 29); JA 3093-94 (Nardelli Decl. ¶ 15); JA 1911 (testimony of James Chapman); JA 2963 (LaSorda Decl. ¶¶ 24, 25). While Chrysler itself had preferred to proceed with a stand-alone plan, that option was ultimately not feasible because the Treasury — Chrysler's sole available funder — was unwilling to finance that option. JA 1932-33, 1957 (testimony of Robert Nardelli).

The evidence also established that all of the consideration for the Sale is going to the secured First Lien lenders and that value received by prepetition creditors as a result of the assumption, cure, and assignment of contracts and the distribution of equity interests in New Chrysler does *not* involve the diversion of any value that otherwise would flow to the Debtors' estates or its secured creditors. See SPA 21-24 (Sale Decision at 21-24); JA 1948-49 (testimony of Robert Nardelli). Among other things, New Chrysler is responsible for making all cure payments on assumed contracts. Stay App. 38a, 56a (Sale Order at 20, 38); JA 3226 (MTA § 2.10).

Significantly, the Indiana Funds presented no evidence establishing that any alternative transaction was available; that secured creditors would recover anything approaching $2 billion in a liquidation; or indeed that any secured creditor

among the 99+ percent not objecting agreed with the Indiana Funds' attempt to torpedo the sale.

In short, the undisputed evidence established that the only alternative to the Sale would be immediate liquidation and dissolution of world-wide businesses that, once gone, would indisputably prejudice thousands of dealers, suppliers, employees, retirees, customers, lenders and other creditors, and have a devastating impact upon communities, large and small, across the United States. JA 1935 (testimony of Robert Nardelli); JA 2956-57 (LaSorda Decl. ¶¶ 7, 8).

D. The Decisions Below

On May 31, the Bankruptcy Court issued a carefully reasoned 47-page opinion approving the Sale Motion. See Opinion Granting Debtors' Motion Seeking Authority to Sell, Pursuant to 11 U.S.C. § 363, Substantially All Of The Debtors' Assets (the "Sale Decision"). On June 1, the Bankruptcy Court entered a corresponding order. See Order (I) Authorizing the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Interests and Encumbrances, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and Related Procedures and (III) Granting Related Relief (the "Sale Order").

The Sale Decision and Sale Order summarized the evidence adduced at trial and approved the sale under the standard established by the Second Circuit in Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063 (2d Cir. 1983). The Bankruptcy Court found, consistent with the undisputed evidence, that "the Debtors have established a good business reason for the sale of their

assets in the early stages of these cases" and that "the Fiat Transaction is the only option that is currently viable. The only other alternative is the immediate liquidation of the company," which would likely generate no more than $800 million in total value for creditors. SPA 16-17, 19 (Sale Decision at 16-17, 19). The Bankruptcy Court concluded that "the consummation of the Sales Transaction was conducted in good faith and at arms' length and is in the best interest of the Debtors' estate." SPA 18 (Sale Decision at 18). Indeed, the court concluded that "the Debtors' estates will suffer immediate and irreparable harm if the relief requested in the Sale Motion is not granted on an expedited basis." Stay App. 25a (Sale Order at 7).

In addition, the Bankruptcy Court found that "the sale of assets is not a sub rosa plan of reorganization" (SPA 18 (Sale Decision at 18)) and that the treatment received by some creditors as a result of the assumption and assignment of their contracts "is not considered a violation of the priority rules nor does it transform a sale of assets into a sub rosa plan" (SPA 21 (Sale Decision at 21); see also Stay App. 26a (Sale Order at 8)). The Bankruptcy Court further concluded that "the UAW, VEBA, and the Treasury are not receiving distributions on account of their pre-petition claims. Rather, consideration to these entities is being provided under separately-negotiated agreements with New Chrysler." SPA 22 (Sale Decision at 22). The Bankruptcy Court further found that the sale process and

related notice were fair and satisfied due process. SPA 39-40 (Sale Decision at 39-40).[3]

The Indiana Funds and other parties appealed from the Sale Order, and the Bankruptcy Court certified the appeals for direct review by the Court of Appeals pursuant to Fed. R. Bankr. P. 8001(f). The United States Court of Appeals for the Second Circuit thereafter ordered expedited briefing and stayed the Sale Order pending its decision. After hearing extensive oral argument on Friday, June 5, the Court of Appeals issued a unanimous panel order affirming the Sale Order "for substantially the reasons stated in the opinions of Bankruptcy Judge Gonzalez." Stay App. 74a (June 5 Order). The Court of Appeals' order extended the stay of the Sale Order until the earlier of 4:00 P.M. on Monday, June 8 or such time as a stay application to this Court is denied.

Reasons for Denying the Application

An application to a single Justice for a stay pending filing of a petition for certiorari is made pursuant to Supreme Court Rules 22 and 23 and 28 U.S.C. § 2101(f), and is governed by a variation on the classic standard for the granting of a stay pending appeal. The party seeking a stay must establish the equivalent of "likelihood of success" — that there is both a "reasonable probability" that four

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[3] The Bankruptcy Court made several other findings in support of the Sale Motion with respect to issues that the Creditors' Committee does not specifically address in this Response — including, inter alia, that the assets may be sold free and clear of liens and interests, that New Chrysler is a good faith purchaser, and that the Debtor properly discharged its fiduciary duties in proposing the sale. See SPA 24-37 (Sale Decision at 24-37); see also Stay App. 30a-31a, 35a-38a (Sale Order at 12-13, 17-20).

Justices will vote to grant certiorari and a "fair prospect" that the party will thereafter prevail on the merits — as well as irreparable harm and, where relevant, that the balance of harms weighs in favor of a stay. See Conkright v. Frommert, 129 S. Ct. 1861, 1861-62 (2009) (Ginsburg, Circuit Justice). We address the latter factor first because it is independently dispositive here.

I. THE BALANCE OF HARMS WEIGHS OVERWHELMINGLY AGAINST A STAY

As demonstrated above, the undisputed facts show that the Indiana Funds will not be harmed but in fact will benefit as a result of the Sale — they will receive their proportional share of $2 billion, rather than a share of the $800 million or less that would constitute the entire recovery for Chrysler's creditors in the event of a liquidation. And a liquidation is exactly what will happen if the Sale is not permitted to close. The result will be not just a loss of value for the First Lien lenders but a complete wiping out of all other creditors and the disappearance of a going concern that directly or indirectly is responsible for the existence of hundreds of thousands of U.S. jobs. The Indiana Funds speculate that the United States and Fiat will not let that happen, but there is no reason for this Court to permit holders of less than one percent of Chrysler's secured debt to force all other constituents of Chrysler to make that gamble with so much hanging in the balance. Any stay that extends to or past June 15 threatens nothing less than a national disaster, and on this ground alone the Application should be denied.

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II. THE INDIANA FUNDS HAVE NOT DEMONSTRATED EITHER A "REASONABLE PROBABILITY" OF OBTAINING CERTIORARI OR A "FAIR PROSPECT" OF REVERSAL

The Indiana Funds' bankruptcy-based arguments for certiorari (and reversal) all proceed from the groundless premise that Chrysler's going concern value is being diverted to pay unsecured creditors rather than the First Lien lenders. This is simply false, and thus the Indiana Funds have no serious prospect of obtaining further relief in this Court.[4]

A. The Proposed Transaction Fits The Paradigm Of A Necessary And Appropriate Going Concern Sale

The Bankruptcy Court correctly determined that the Sale is a classic going concern asset sale consistent with the core values of the Bankruptcy Code. Under Chapter 11 of the Code, "the purpose of a business reorganization case, unlike a liquidation case, is to restructure the business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders." H.R. Rep. No. 95-595, at 220 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6179. Underlying this objective is the legislative conclusion that "[i]t is more economically efficient to reorganize than to liquidate, because it preserves jobs and assets" and because "assets that are used for production in the industry for which they were designed are more valuable than those same assets sold for scrap." Id.; see 7 William M. Collier, Collier on Bankruptcy ¶ 1100.01

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[4] The Debtors address in their Response the Indiana Funds' additional, equally groundless, arguments regarding the Emergency Economic Stabilization Act and Troubled Asset Relief Program.

(Resnick & Sommer eds., 15th ed. rev. 2008) (Chapter 11 intended to "enable the debtor to preserve any positive difference between the going concern value of the business and the liquidation value. Moreover, continued operation can save the jobs of employees, the tax base of communities, and generally reduce the upheaval that can result from termination of a business").

Based on this legislative judgment, the "paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor" as a going concern. In re Chateaugay Corp., 118 B.R. 19, 22 (Bankr. S.D.N.Y. 1990); accord N.L.R.B. v. Bildisco & Bildisco, 465 U.S. 513, 528 (1984) ("fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources"); In re Ionosphere Clubs, Inc., 98 B.R. 174, 176-77 (Bankr. S.D.N.Y. 1989) (same); In re Doyle Manufacturing Corp., 77 F. Supp. 116, 119 (N.D.N.Y. 1948) ("It is the Court's obligation to preserve the going concern value of this debtor for the benefit of those having a financial interest therein"); see also NMSBPCSLDHB, L.P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.), 384 F.3d 108, 119 (3d Cir. 2004) (the "Supreme Court has identified two of the basic purposes of Chapter 11 as (1) 'preserving going concerns' and (2) 'maximizing property available to satisfy creditors'") (citing Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 453 (1999), and Toibb v. Radloff, 501 U.S. 157, 163-64 (1991)).

It has long been recognized that, where necessary to preserve going concern value, sale of a debtors' business need not await the confirmation of a chapter 11 plan. As a result, bankruptcy courts frequently authorize the sale of the debtor's assets pursuant to section 363 of the Bankruptcy Code prior to the plan process, where the transaction represents the sound exercise of the debtor's business judgment and is necessary to preserve the business as a going concern and to maximize value for stakeholders. See Florida Dep't of Revenue v. Piccadilly Cafeterias, Inc., 128 S. Ct. 2326, 2331 n.2 (2008) (chapter 11 "expressly contemplates" a debtor "selling substantially all its assets as a going concern" and then later submitting "a plan of liquidation (rather than a traditional plan of reorganization) providing for the distribution of the proceeds resulting from the sale").

For example, In re Decora Indus., Inc., No. 00-4459 JJF, 2002 WL 32332749 (D. Del. May 20, 2002), the court approved the sale of substantially all of a debtor's assets because its "net revenues [were] insufficient to support the ongoing operations and the necessary capital and other improvements" and the debtor had no other sources of financing. As such, the estates' only options were to "proceed with the [p]roposed [sale] [t]ransaction . . . or terminate business operations, employees and commence a liquidation of assets." Id. at *3. Concluding that the proposed sale "preserves the going-concern value of [d]ebtors' business and the jobs of [d]ebtors' employees," the court permitted the debtor to proceed and overruled the objectors' claims. Id.; accord In re Summit Global Logistics, Inc., No. 08-11566,

2008 Bankr. LEXIS 896, at *30 (D.N.J. Mar. 26, 2008) (approving sale of business pursuant to Section 363 because "the failure to consummate a sale at this juncture will result in a complete shut down of the Debtor's operations" and "a going concern sale proves more lucrative than a sale of a non-operational entity"); In re Lady H Coal Company, 193 B.R. 233, 243-44 (Bankr. S.D.W. Va. 1996) (approving sale of business where only other "viable options" would be infusion of working capital from third party; given absence of such capital, court held that "debtors' business judgment is justified in seeking a sale of the major portion of assets as any hope of eliminating losses and rehabilitating operations appear unrealistic").

Nor are these cases unique. In the past few months, several pre-plan going concern sales have been approved by bankruptcy judges in the Southern District of New York. See, e.g., In re Silicon Graphics, Inc., Case No. 09-11701 (MG), Dkt. No. 292; In re BearingPoint, Inc., Case No. 09-10691 (REG), Dkt. No. 468; In re Lehman Brothers Holdings, Inc., Case No. 08-13555 (JMP), Dkt. No. 258.

The Second Circuit set forth a widely recognized test to determine when going concern sale transactions are authorized by section 363(b) of the Bankruptcy Code, requiring that the debtor demonstrate and the court find that there is a "good business reason" to enter the proposed transaction. See Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983); accord Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 466 (2d Cir. 2007).

Here, the Bankruptcy Court's conclusion that the Debtors met this standard cannot seriously be challenged. As the Debtors' witnesses testified without contradiction, the Debtors' current operations are not sufficient to support their cash needs and their sole remaining source of funds — financing provided by the federal governments of the United States and Canada — is set to expire in the near term. No parties other than New Chrysler have bid for, or even investigated, a potential purchase of the business of Old Chrysler. SPA 16-17 (Sale Decision at 16-17).

If the Sale is not permitted to close, the estates' only remaining alternative would be an immediate liquidation of the Debtors' business, which would likely yield a net amount of no more than $800 million. SPA 17-19 (Sale Decision at 17-19); JA 1742 (testimony of Robert Manzo). Not only would such a result vastly diminish the value available to satisfy the claims of all stakeholders in Chrysler, it would also impose wrenching consequences on society at large flowing from the collapse of not only Chrysler's businesses, but the businesses of thousands of dealers and suppliers that are dependent upon Chrysler and, potentially, of other major auto manufacturers as well. Consistent with the long line of cases approving going concern sales under section 363(b) and the goals of Chapter 11, the Bankruptcy Court correctly granted the Debtors' Sale Motion.

No substantial Chrysler constituency disagrees. On appeal, objections are being spearheaded by secured lenders representing less than one percent of the First Lien debt. This fringe group should not be permitted to thwart the

overwhelming majority of creditors in every constituency that have reasonably concluded that the Sale is the *only* way to salvage a viable company and maximize value for all creditors.

Nor can the Bankruptcy Court be faulted for approving the Sale despite the unavoidable reality that it will harm some constituents of Chrysler. In particular, a number of long-time Chrysler dealers face the destruction or dramatic diminution of their businesses (and the loss of jobs for their employees) because of the hard decisions that Chrysler had to make in rationalizing its dealer roster to strengthen the overall going concern. JA 1995-96 (testimony of Peter Grady); JA 220 (Grady Decl. ¶ 17). As the Second Circuit has observed, "[s]ympathy for the non-debtor that may, through no fault of its own, bear some significant burden from the debtor's rejection of an executory contract due to the happenstance of an unforeseen bankruptcy proceeding is understandable." COR Route 5 Co., LLC v. Penn Traffic Co., (In re Penn Traffic Co.), 524 F.3d 373, 382 (2d Cir. 2008). However, the court cautioned that the Bankruptcy Code "does not condition the right to assume or reject on a lack of prejudice to the non-debtor party," id., and stressed that "[t]he interests of the creditors collectively and the bankrupt estate as a whole will not yield easily to the convenience or advantage of one creditor out of many." id. (quoting Pub. Serv. Co. of N.H. v. N.H. Elect. Coop. (In re Pub. Serv. Co. of N.H.), 884 F.2d 11, 14-15 (1st Cir. 1989)). If the interests of the minority of discontinued dealers must yield to the greater good of the far larger number of businesses and jobs that will be saved through the Sale, a fortiori creditors

representing a miniscule portion of the secured debt should not be permitted to hold the Sale hostage based on their unproven assertion that some other hypothetical transaction might result in a greater payout to them.

B. The Proposed Sale Is Not A Sub Rosa Plan Or Otherwise Inconsistent With The Bankruptcy Code

Notwithstanding the clear line of authority sanctioning a section 363(b) sale of substantially all the assets of a debtor's business in advance of a plan of reorganization, the Indiana Funds have asserted that the Sale Motion is an impermissible sub rosa plan that dictates the terms of any future plan of reorganization and generally "short circuits" plan confirmation requirements. Relying heavily on the decision in In re Braniff Airways, Inc., 700 F.2d 935 (5th Cir. 1983), the Indiana Funds claim that the Sale impermissibly purports to dictate certain results — including the amount and nature of the distributions various classes of creditors will receive — that they assert can be effected only pursuant to a plan of reorganization. In particular, they claim the MTA provides for certain creditors, such as the UAW, the VEBA, and the Treasury to receive substantial consideration in the form of notes or equity in New Chrysler while leaving creditors of equal or greater priority likely to receive a materially smaller distribution on their claims against Old Chrysler.

The Objectors are simply mistaken. Braniff concerned an asset sale that didn't merely sell assets as a going concern, but tried to dictate material terms of a future plan (including that the scrip that Braniff received as part of the purchase price could be used only in a future Braniff reorganization and could be

issued only to certain creditors, and that secured creditors would be bound to vote a portion of their deficiency claims in favor of any future plan backed by a majority of the unsecured creditors' committee). See 700 F.2d at 939-40. Here, in contrast, New Chrysler will simply pay a cash purchase price to and assume certain liabilities of Old Chrysler — the same as in any other section 363 sale of a business. Secured creditors of Old Chrysler, like the Indiana Pensioners, will have the remainder of their claims (net of their share of the $2 billion sale proceeds) determined and treated in connection with future proceedings in the case. The Bankruptcy Court correctly concluded that "the Debtors are not attempting to evade the plan confirmation procedures." SPA 20 (Sale Decision at 20).

The Indiana Funds make several related arguments based on their inexplicable (but relentless) assertion that the $2 billion purchase price constitutes a "liquidation" valuation (see Application at 7, 9, 17) rather than what it indisputably is: the most the assets could fetch on a going concern basis after a world-wide marketing process and court-supervised auction. The Indiana Funds' supposed certiorari-worthy issue based on Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997), is thus a complete non sequitur, because the Sale does not represent "a shift in valuation methodologies." Application at 17. Rash concerned the methodology to be used to determine the value of collateral that a debtor chooses to retain rather than surrender or sell, and mandates the use of replacement rather than foreclosure value. See 520 U.S. at 960, 962-63. Where, as

here, the assets have actually been sold on the open market, Rash is irrelevant — the value is determined by the actual sale.

Similarly, the Indiana Funds' invocation of In re Armstrong World Industries, Inc., 432 F.3d 507 (3d Cir. 2005), is way off the mark. Armstrong concerned a reorganization plan that violated the absolute priority rule by transferring value belonging to the estate to junior creditors when more senior creditors were not being paid in full. See 432 F.3d at 513. The Indiana Funds try to shoehorn the Chrysler Sale into this rubric by asserting that the UAW, the VEBA, and the Treasury are somehow receiving distributions of value from Old Chrysler in respect of prepetition claims. But all consideration provided to these entities as part of the Sale flows from separately negotiated agreements with New Chrysler, not as distributions on prepetition unsecured claims. To take over and run Old Chrysler's business, New Chrysler must assume (or otherwise enter into new) contractual obligations that are essential to operate the business profitably. These contracts include not only agreements with the majority of Old Chrysler's dealers, suppliers, and others, but, critically, the agreements covering Old Chrysler's unionized workforce. JA 3010 (Kolka Aff. ¶ 90); Garberding Decl. ¶¶ 24, 30 [Docket No. 49]; JA 1948, 1996 (testimony of Robert Nardelli and Peter Grady); JA 3092 (Nardelli Decl. ¶ 11). As the Bankruptcy Court confirmed, "[n]ot one penny of value of the Debtors' assets is going to anyone but the First-Lien Lenders." SPA 18 (Sale Decision at 18).

Far from constituting a disguised attempt to elevate the priority of the unsecured claims of preferred constituents, New Chrysler's renegotiation of key business terms, and the consequent assumption of the amended collective bargaining agreement with the UAW as part of the transaction, is a rational and customary effort to secure a motivated and effective workforce post-transaction. Similarly, while the UAW conditioned its willingness to enter the new CBA on New Chrysler's establishment of modified funding arrangements for the VEBA to fund retiree health benefits (JA 3598-3600 (Curson Decl. ¶¶ 5-8)), nothing in the Bankruptcy Code prevents a purchaser from negotiating terms of employment with a workforce representative. A consensually modified new agreement with the UAW was essential if Chrysler was to move forward as a going concern. JA 3600 (Curson Decl. ¶¶ 10); JA 1948 (testimony of Robert Nardelli).

The Bankruptcy Code recognizes that the assumption of an executory contract (such as a dealer, supplier, or collective bargaining agreement) may result in "the creditor who is party to the lease or executory contract receiving more favorable treatment than other creditors." See In re Café Partners/Washington 1983, 90 B.R. 1, 7 n.5 (Bankr. D.D.C. 1988). However, that does not render the treatment of that creditor unfairly preferential. See id. (rejecting argument that assumption of lease would put landlord in favored position over other creditors). The Bankruptcy Court correctly found that these agreements were necessary for the viability of New Chrysler and did not divert "value which would otherwise inure to the benefit of the Debtors' estates." SPA 23 (Sale Decision at 23). The Indiana

Funds' allegation that the Sale Order diverts to unsecured creditors "assets that Chrysler lawfully should use to satisfy its obligations" to the First Lien lenders (Application at 3) is simply false.

Similarly, the Treasury is not receiving its equity in New Chrysler on account of its prepetition claims against Old Chrysler. Rather, it is receiving a minority stake in New Chrysler as additional consideration for making a *new* $6.2 billion loan to New Chrysler that will be used to purchase Old Chrysler's assets and to fund New Chrysler's ongoing operations. This is an unrelated transaction between New Chrysler and its funding source, not a disposition of property of the estates. SPA 23 (Sale Decision at 23). In short, that the UAW, the VEBA, and the Treasury are also creditors of Old Chrysler does not render their agreements with New Chrysler to permit the businesses to be acquired and operate as a going concern inappropriate or represent a disguised effort to fix or make distributions on the prepetition claims of these parties.

Unlike in cases like Braniff, neither the express terms of the MTA nor the transactions it contemplates will dictate any terms of a proposed chapter 11 plan or predetermine the future course of these cases. The consummation of the Sale, if it is approved, will not strip the estate of all assets or fix the final amounts of distributions. Rather, the estates will retain certain assets as well as various categories of claims, including the rejection damage claims of hundreds of dealers and suppliers and tort claimants and others, that will remain to be resolved. There is material work that remains in these estates post-sale. For these reasons, as well

as those expressed previously, the Sale constitutes a straightforward — albeit an extraordinarily large — going concern transaction and not a sub rosa plan.

In short, none of the Indiana Funds' supposedly certiorari-worthy issues has any grounding in the actual facts and reality of this transaction — and they provide no basis to project any likelihood either that certiorari will be granted or that the Court ultimately will reverse the Sale Order and doom Chrysler to liquidation.

* * *

The Chrysler Sale transaction is not perfect — and indeed, it will leave compromised constituents of the Creditors' Committee — but in these dire times, the parties and the courts cannot allow the perfect to be the enemy of the good. In view of the challenges that Chrysler faces, the proposed transaction is remarkable in preserving the core of this ongoing enterprise, saving many thousands of jobs, and preserving the livelihoods of a majority of Chrysler dealers and suppliers in the face of the worst economic adversity in the last 75 years. There is no alternative available to this transaction. No responsible fiduciary for the company or any appreciable group of creditors could do other than support it and work for its consummation.

Conclusion

For the foregoing reasons, the Application should be denied.

Dated: New York, New York
June 7, 2009

Respectfully submitted.

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ Jeffrey S. Trachtman
Thomas Moers Mayer
Kenneth H. Eckstein
Jeffrey S. Trachtman
(Counsel of Record)

1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100

Counsel for the Official Committee of Unsecured Creditors of Chrysler LLC, et al.

Certificate of Service

I, Jeffrey S. Trachtman, hereby certify that on June 7, 2009, true and complete copies of the attached Response of the Official Committee of Unsecured Creditors, dated June 7, 2009, were served by electronic mail upon the counsel listed on the attached service list.

Dated: New York, New York
June 7, 2009

/s/ Jeffrey S. Trachtman

Jeffrey S. Trachtman

Glenn M. Kurtz
Thomas E. Lauria
White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
gkurtz@whitecase.com
tlauria@whitecase.com

Corinne Ball
Jeffrey B. Ellman
Veerle Roovers
Jones Day
222 East 41st Street
New York, New York 10017
cball@jonesday.com
jbellman@jonesday.com
vroovers@jonesday.com

Jeannette Vargas
Tara M. LaMorte
Assistant United States Attorneys
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007
jeannette.vargas@usdoj.gov
tara.lamorte2@usdoj.gov

Deborah M. Buell
James L. Bromley
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, New York 10006
dbuell@cgsh.com
jbromley@cgsh.com

John J. Rapisardi
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, New York 10281
john.rapisardi@cwt.com

Babette Ceccotti
Cohen Weiss and Simon LLP
330 W. 42nd Street
New York, New York 10036
bceccotti@cwsny.com

Scott D. Miller
Andrew Dietderich
Hydee R. Feldstein
Sullivan & Cromwell LLP
1888 Century
Park East, 21st Floor
Los Angeles, California 90067
millersc@sullcrom.com
dietdericha@sullcrom.com
feldsteinh@sullcrom.com

Peter Pantaleo
David Eisenberg
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
ppantaleo@stblaw.com
deisenberg@stblaw.com

Brian S. Masumoto
Office of the United States Trustee
Southern District of New York
33 Whitehall Street, 21st Floor
New York, New York 10004

Michael J. Edelman
Michael L. Schein
Vedder Price P.C.
1633 Broadway, 47th Floor
New York, New York 10019
mjedelman@vedderprice.com
mschein@vedderprice.com

Benjamin P. Deutsch
Schnader Harrison Segal & Lewis LLP
140 Broadway, Suite 3100
New York, New York 10005
bdeutsch@schnader.com

Sander L. Esserman
Peter C. D'Apice
Stutzman, Bromberg, Esserman & Plifka
2323 Bryan Street, Suite 2200
Dallas, Texas 75201
esserman@sbep-law.com
d'apice@sbep-law.com

Alan R. Brayton
Christina Skubic
Brayton Purcell LLP
P.O. Box 6169
222 Rush Landing Road
Novato, California 94948

Edward J. Peterson, III
Stichter, Riedel, Blain & Prosser, P.A.
110 East Madison Street, Suite 200
Tampa, Florida 33602
epeterson@srbp.com

Elizabeth J. Cabraser
Robert J. Nelson
Scott P. Nealey
Lieff Cabraser Heimann & Bernstein LLP
275 Battery Street, 30th Floor
San Francisco, California 94111
snealey@lchb.com

Adina H. Rosenbaum
Allison M. Zieve
Public Citizen Litigation Group
1600 20th Street NW
Washington, DC 20009
arosenbaum@citizen.org
azieve@citizen.org

James B. Fishman
Fishman & Neill LLP
305 Broadway, Suite 900
New York, New York 10007
Jamesr626@aol.com

IN THE SUPREME COURT OF THE UNITED STATES

No. 08A1096

INDIANA STATE POLICE PENSION TRUST, ET AL., APPLICANTS

v.

CHRYSLER LLC, ET AL.

ON APPLICATION FOR STAY

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Solicitor General, on behalf of the United States of America, respectfully submits this memorandum in opposition to the application for a stay submitted by the Indiana Funds.

STATEMENT

1. On April 30, 2009, Chrysler LLC and 24 of its subsidiaries (collectively, Chrysler or Debtors), faced with sharply reduced consumer demand, severe operating losses, and a lack of access to credit, filed for Chapter 11 bankruptcy protection. Before filing for bankruptcy, Chrysler exhaustively pursued all other options, including a possible sale, possible joint ventures, and possible new financing. Only the United States Department of the Treasury, Export Development Canada, and Fiat S.p.A. (Fiat) proved willing to ally themselves with Chrysler.

a. Both before and after Chrysler filed for bankruptcy, the Treasury Department committed billions of dollars in federal financing to Chrysler through the Troubled Assets Relief Program

(TARP), thereby staving off an immediate, value-destroying liquidation. TARP is an economic-stabilization measure authorized by Congress in the Emergency Economic Stabilization Act of 2008 (EESA), Pub. L. No. 110-343, 122 Stat. 3765 (to be codified at 12 U.S.C. 5201 et seq.). Congress enacted EESA to "provide authority and facilities that the Secretary of the Treasury can use to restore liquidity and stability to the financial system of the United States." 12 U.S.C.A. 5201(1) (West Supp. 2009). To accomplish this purpose, EESA authorizes the Secretary to purchase "troubled assets from any financial institution, on such terms and conditions as are determined by the Secretary." 12 U.S.C.A. 5211 (West Supp. 2009).

EESA defines the term "financial institution" to mean "any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company, established and regulated under the laws of the United States or any State * * * , and having significant operations in the United States, but excluding any central bank of, or institution owned by, a foreign government." 12 U.S.C.A. 5202(5) (West Supp. 2009). The "troubled assets" eligible for purchase under TARP include mortgages, securities related to mortgages, and "any other financial instrument that the Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines the purchase of which is necessary to

promote financial market stability." 12 U.S.C.A. 5202(9) (West Supp. 2009). When the Secretary determines that the purchase of particular assets under TARP is appropriate, he must transmit that determination, "in writing, to the appropriate committees of Congress." Ibid. EESA also directs the Secretary to "publish program guidelines" that address, inter alia, the "[c]riteria for identifying troubled assets for purchase" under TARP. 12 U.S.C.A. 5211(d)(4) (West Supp. 2009).

Pursuant to this authority, the Treasury Department has determined that TARP funds may be used to purchase assets from automobile companies when necessary to prevent those companies' failure or major disruption from disrupting the stability of the Nation's economy and financial markets. See U.S. Dep't of the Treasury, Guidelines for Automotive Industry Financing Program <http://www.financialstability.gov/docs/AIFP/AIFP_guidelines.pdf>. Consistent with those guidelines, the Secretary has transmitted to Congress a written determination that the debt obligations and equity of certain automotive companies qualify as "troubled assets" and that such companies qualify as "financial institutions" within the meaning of EESA. Appl. App. 93a-94a.

2. Before it entered bankruptcy, Chrysler sought and received two loans from TARP funds, totaling more than $4 billion, which it used as working capital to meet its obligations to warranty holders, suppliers, and bondholders (including applicants here).

In reviewing Chrysler's request for the second loan, the United States determined that Chrysler was no longer viable as a stand-alone company, and it required as a condition for further loans that Chrysler form a strategic partnership with an appropriate partner by a date certain.

On April 30, 2009, Chrysler reached a tentative agreement with nearly all of its stakeholders on the terms of a transaction to form such a partnership with Fiat. Chrysler agreed to sell substantially all of its assets to New Carco Acquisition Ltd. (New Chrysler), in exchange for which New Chrysler would assume certain liabilities of Chrysler and pay Chrysler $2 billion in cash. Fiat would contribute access to production platforms, technology, and distribution capabilities to New Chrysler in exchange for a 20% stake. The terms of the agreement set June 15, 2009, as the deadline for the transaction to close; after that date, Fiat has the option to withdraw from the agreement and abandon the transaction.

Meanwhile, Chrysler was unable to satisfy the Treasury Department's conditions for continued funding as a going concern. Accordingly, on April 30, Chrysler and 24 of its subsidiaries decided to file for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of New York. Debtors continued to operate their businesses as debtors-in-possession.

2. Pursuant to 11 U.S.C. 363, Debtors moved the bankruptcy court for permission to consummate the sale to New Chrysler. See 11 U.S.C. 363(b)(1) (debtor-in-possession, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the [bankruptcy] estate"); see also 11 U.S.C. 1107(a). Applicants filed an objection to the sale. Applicants are state-employee investment funds that hold less than 1% of Chrysler's first-priority secured debt.[1]

If the sale is consummated, applicants' security interest will transfer to the cash that Chrysler acquires in the transaction. The entirety of the purchase price will ultimately be used to pay the claims of applicants and their fellow holders of first-priority debt. The $2 billion purchase price represents approximately 29% of Chrysler's first-lien debt. App., infra, 11, 20.

3. Following a three-day evidentiary hearing, the bankruptcy court overruled applicants' objection and approved the sale. The court entered an order approving the sale (Appl. App. 19a-67a) and an accompanying opinion (App., infra, 1-47).

a. The bankruptcy court concluded that the sale was amply justified by the grave situation Chrysler is facing. The court

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[1] As of the date it filed for bankruptcy, Chrysler owed approximately $6.9 billion to creditors under an Amended and Restated First Lien Credit Agreement. The creditors have a security interest in, and a first lien on, substantially all of Chrysler's assets. Applicants hold approximately $42 million of this first-priority secured debt. App., infra, 11.

explained that, "[n]otwithstanding the highly publicized and extensive efforts that have been expended in the last two years to seek various alliances for Chrysler, the Fiat Transaction is the only option that is currently viable. The only other alternative is the immediate liquidation of the company." App., infra, 16-17 (emphasis added). The court further concluded that the transaction is a superior alternative to liquidation because it permits New Chrysler to preserve the value of many of Chrysler's assets as a going concern, and the $2 billion on offer "certainly exceeds the liquidation value," which is at most $800 million. Id. at 17; see id. at 18-19.

The bankruptcy court acknowledged that a bankruptcy estate's sale of assets cannot be approved if the sale "would amount to a sub rosa plan of reorganization." App., infra, 16. The court found no such subversion of the requirements of Chapter 11 here, however, because the significant and ongoing depreciation of Chrysler's assets made it crucial to conduct the sale in time to preserve the going-concern value of many of those assets. Ibid. The court further observed that "[t]he Debtors are receiving fair value for the assets being sold," and that "[n]ot one penny of the Debtors' assets is going to anyone other than the First-Lien Lenders," id. at 18, who include the applicants here, see note 1, supra.

Although consent by lienholders (or the satisfaction of other statutory conditions not relevant here, see 11 U.S.C. 363(f)) is required to sell the assets free and clear of any security interests, the bankruptcy court concluded that applicants and their fellow first-tier secured creditors had provided the required consent. All holders of the first-tier debt had irrevocably agreed to allow their authorized agent to release the collateral based on the majority vote of the creditors. Because 92.5% of the creditors in applicants' position had agreed to the transaction, the authorized agent gave its consent and released the collateral. App., infra, 24-30.

b. In a separate opinion, the bankruptcy court rejected applicants' challenge to the use of TARP funds for the transaction. Appl. App. 8a-13a. Applicants contended that Chrysler is not a "financial institution" within the meaning of EESA and that the use of TARP funds to acquire Chrysler's assets is therefore unlawful. The court did not reach the merits of that argument because it concluded that applicants lacked standing to challenge the use of Treasury funds to purchase the assets in question.

The bankruptcy court found for two reasons that applicants had not established injury in fact. The court first explained that applicants were bound by their authorized agent's decision to release the collateral (see p. 7, supra) and could not claim injury from that decision. See Appl. App. 12a. The court also relied on

its factual finding, made in the separate opinion authorizing the sale, that the collateral at issue is worth no more than the $2 billion sale price. See ibid. For that reason, the court concluded, applicants will receive at least as much under the sale as they would under a liquidation and therefore have not suffered injury in fact. See ibid.

The court further held that, even if applicants could establish injury in fact, they could not show that their injury was "fairly traceable to the U.S. Treasury's use of TARP funds." Appl. App. 12a. The court explained that, "[i]f a non-governmental entity were providing the funding in this case, the [applicants] would be alleging the same injury, i.e., interference with their collateral. In this light, it is not the actions of the lender that the [applicants] are challenging but rather the transaction itself." Ibid.

c. Although the Bankruptcy Rules generally provide for a stay of ten days before an order authorizing a sale or assignment takes effect, Fed. R. Bankr. P. 6004(h), 6006(d), the bankruptcy court concluded that a ten-day stay was not justified given the time-sensitive nature of the Chrysler sale and the $100 million per day being lost each day that Chrysler remains in bankruptcy. Accordingly, the bankruptcy court declined to stay its order beyond noon on June 5. Appl. App. 66a-67a & n.4.

Pursuant to 28 U.S.C. 158(d) and with the agreement of the parties, the bankruptcy court certified its order to permit appeal directly to the court of appeals. Appl. App. 70a-71a. On June 2, the court of appeals accepted the appeal, id. at 73a, and issued a highly expedited schedule for briefing and argument, id. at 72a. In issuing that schedule, the court of appeals granted applicants' motion for a continued stay pending the court's consideration of the case. Ibid.

4. On Friday, June 5, the court of appeals affirmed the judgment of the bankruptcy court "for substantially the reasons stated in the opinions of Bankruptcy Judge Gonzalez." Appl. App. 74a. The court indicated that an opinion or opinions will follow. Ibid. The court of appeals has continued its temporary stay of the bankruptcy court's order until 4:00 p.m. on Monday, June 8, or this Court's denial of a further stay, whichever is earlier. Ibid.

ARGUMENT

"Denial of [an] in-chambers stay application[] is the norm; relief is granted only in 'extraordinary cases.'" Conkright v. Frommert, 129 S. Ct. 1861, 1861 (2009) (Ginsburg, J., in chambers) (quoting Rostker v. Goldberg, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers)). To justify such relief, applicants must show, at a minimum, "(1) 'a "reasonable probability" that four Justices will consider the issue sufficiently meritorious to grant certiorari * * * ; (2) 'a fair prospect that a majority of the Court

will conclude that the decision below was erroneous'; and (3) a likelihood that 'irreparable harm [will] result from the denial of a stay.'" Id. at 1861-1862 (quoting Rostker, 448 U.S. at 1308) (brackets in original); accord, e.g., Stroup v. Willcox, 549 U.S. 1501, 1501 (2006) (Roberts, C.J., in chambers); Barnes v. E-Systems, Inc. Group Hosp. Med. & Surgical Ins. Plan, 501 U.S. 1301, 1302 (1991) (Scalia, J., in chambers). Even if applicants could satisfy those prerequisites, they would not necessarily be entitled to the relief they seek. Rather, "in a close case it may be appropriate to 'balance the equities' -- to explore the relative harms to applicant[s] and respondent[s], as well as the interests of the public at large." Conkright, 129 S. Ct. at 1862 (quoting Rostker, 448 U.S. at 1308).

In this case, applicants can satisfy none of the Court's requirements for an in-chambers stay, and the balance of the equities weighs heavily against the entry of such relief. Applicants oppose the sale because, if the sale is consummated, they will likely receive approximately 29% of the value of their secured liens. On the merits, applicants contend that the Treasury Department's use of TARP funds to finance the sale is unlawful because Chrysler is not a "financial institution" within the meaning of EESA, and that the sale itself is invalid as a sub rosa reorganization plan.

The bankruptcy court specifically found, however, that (a) as a practical matter, the sale that it approved is the only feasible alternative to liquidation of Chrysler's assets, and (b) applicants and other first-lien creditors would receive no more under a liquidation than the $2 billion that the sale will produce. Those findings were central both to the court's determination that applicants lack standing to challenge the use of TARP funds and to the court's ultimate decision to approve the sale. Applicants make no meaningful effort to show that either of those findings is wrong, much less to demonstrate that review of those findings is an appropriate use of this Court's resources. The application for a stay should therefore be denied.

1. Neither of applicants' challenges to the court of appeals' ruling satisfies this Court's criteria for certiorari review. First, applicants' challenge to the use of TARP funds is not properly before the Court because (as both courts below appear to have concluded) applicants lack standing to raise it.[2] Applicants offer only passing references to the bankruptcy court's resolution of the standing issue, and they do not contend that the question of standing itself warrants this Court's review. Second, applicants' challenge to the bankruptcy court's approval of the

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[2] Given that the court of appeals affirmed the bankruptcy court "for substantially the reasons stated in the opinions of Bankruptcy Judge Gonzalez," Appl. App. 74a, the Second Circuit appears to have agreed with the bankruptcy court that applicants lack standing to raise their EESA challenge.

sale rests on the premise that the facts of this case are not as the bankruptcy court found them. The bankruptcy court applied settled law to the trial record, and the court of appeals' affirmance of that decision does not conflict with any decision of this Court or another court of appeals. There is accordingly no basis for further review or for an interim stay.

a. Applicants cannot show a reasonable likelihood that four Members of this Court will vote to review their claim regarding the automobile industry's eligibility for TARP funds. Applicants do not even address the settled standing principles on which the courts below relied to dismiss their EESA challenge. Instead, applicants simply assert that the bankruptcy court resolved the standing issue "incorrectly," Appl. 2, and then proceed to discuss the merits of the EESA question. Applicants contend that the question whether Chrysler is an EESA "financial institution" warrants this Court's review, see Appl. 14-16, 22-23, even though that issue has not yet been addressed by any court in this or any other litigation.

This Court has often cautioned that it is a tribunal "of final review, 'not of first view.'" FCC v. Fox Television Stations, Inc., 129 S. Ct. 1800, 1819 (2009) (quoting Cutter v. Wilkinson, 544 U.S. 709, 718 n.7 (2005)). Accordingly, its "usual procedures" counsel against a "rush to judgment without a lower court opinion." Ibid. There is no reasonable likelihood that four Justices would

vote to grant review of a question of statutory construction that was not passed on by either court below. That is particularly so here, where the courts below did not decide the interpretive question because they concluded that applicants lack standing. If that holding is correct, then no federal court has jurisdiction to decide the merits of applicants' EESA challenge, even if the proper interpretation of 12 U.S.C.A. 5202(5) (West Supp. 2009) (EESA's definition of "financial institution") otherwise would warrant this Court's review.

Applicants do not challenge the bankruptcy court's legal analysis of the standing question. They briefly suggest in their statement of facts (Appl. 10) that one of the bankruptcy court's three alternative rationales for concluding that applicants lack standing rested on an incorrect factual finding. But this Court generally does not disturb "concurrent findings of fact by two courts below"; it departs from that practice only when presented with a "very obvious and exceptional showing of error," which applicants have not shown. Exxon Co., U.S.A. v. Sofec, Inc., 517 U.S. 830, 841 (1996) (quoting Graver Tank & Mfg. Co. v. Linde Air Products Co., 336 U.S. 271, 275 (1949)). And applicants do not question the bankruptcy court's other rationales for finding no injury in fact -- including the highly fact-specific conclusion that applicants gave their agent the irrevocable authority to

consent to the release of their collateral. See Appl. App. 11a-12a; see also App., infra, 24-30 (explaining applicants' consent).

Even if applicants had established standing to challenge the Treasury Department's use of TARP funds to acquire Chrysler's assets, there is no reasonable likelihood that this Court would grant review to decide applicants' EESA claim. The relevant EESA provision was enacted only eight months ago and has not yet been construed by any federal court, including the courts below.

b. The bankruptcy court's approval of the sale, affirmed by the Second Circuit, does not conflict with any decision of this Court or another court of appeals. Nor have applicants identified any other basis for concluding that this Court will grant certiorari to review the highly fact-specific holdings below.

Applicants principally contend (Appl. 17-18) that the bankruptcy court employed "shifting valuation methodologies" and that the choice of valuation method conflicts with this Court's decision in Associates Commercial Corp. v. Rash, 520 U.S. 953 (1997). Applicants' premise is flawed, and their reliance on Rash is misplaced. The bankruptcy court correctly explained that a purchaser that will operate Chrysler's assets places a greater value on them than those same assets would fetch at liquidation. App., infra, 18-19. The liquidation value, by the time of the hearing, had decreased to at most $800 million. Id. at 19. By contrast, the value of the assets in the context of this sale has

been measured by the market, through bidding procedures already determined to be fair and adequate to attract the highest and best offer available. See Id. at 38-39. That value is the $2 billion that New Chrysler is paying. Id. at 18-19.

The Court in Rash addressed a question not presented here -- how to value collateral that the debtor does not plan to sell, but rather intends to keep and continue to use. Precisely because the collateral in the Rash scenario is not being sold on the market (or surrendered to a creditor who will sell it), the Bankruptcy Code requires use of a valuation method that measures the economic benefit of leaving the collateral in the debtor's hands. See 520 U.S. at 962-963. Here, by contrast, the value of the assets has been measured by the price a purchaser will pay to acquire and operate the assets.

Applicants' attempts to establish a circuit conflict concerning the concept of a "sub rosa" reorganization plan (Appl. 18-20) are similarly unavailing. The bankruptcy court extensively discussed that issue in its opinion, see App., infra, 16, 18-24, and concluded that on these facts applicants had not shown an impermissible attempt to implement a sub rosa plan.[1] As the court recognized, the Second Circuit has held that a bankruptcy court may

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[1] Applicants address (Appl. 19) only the bankruptcy court's discussion of sub rosa plans in its order. Applicants disregard the court's more extensive analysis of that issue in its opinion, App., infra, 16, 18-24, which is expressly incorporated into the order, see Appl. App. 42a.

deny permission to conduct a transaction if it "would amount to a sub rosa plan of reorganization." Id. at 16 (quoting Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC), 478 F.3d 452, 466 (2d Cir. 2007)). Indeed, the Second Circuit has expressly agreed with applicants' leading case on the point. Motorola, 478 F.3d at 466 (citing PBGC v. Braniff Airways, Inc. (In re Braniff Airways, Inc.), 700 F.2d 935, 940 (5th Cir. 1983)). But the facts of the sale here do not amount to a sub rosa reorganization plan. Unlike in Braniff, for example, there is no attempt to dictate how the sale proceeds will be used in a contemplated reorganization or how the creditors will vote on a future reorganization plan. See Braniff, 700 F.2d at 940.

Applicants' reliance (Appl. 19) on In re Abbotts Dairies of Pa., Inc., 788 F.2d 143 (3d Cir. 1986), is similarly misplaced. The Third Circuit held in that case that "when a bankruptcy court authorizes a sale of assets pursuant to [11 U.S.C.] 363(b)(1), it is required to make a finding with respect to the 'good faith' of the purchaser." Id. at 149-150. Here, the bankruptcy court made an express finding of good faith by New Chrysler. See Appl. App. 63a; App., infra, 34-37. Applicants disputed that finding extensively on appeal, Appl. C.A. Br. 69-75, and the court of appeals affirmed. As the court in Abbotts Dairies noted, such a finding helps to "ensure[] that section 363(b)(1) will not be employed to circumvent the creditor protections of Chapter 11,"

which has its own good-faith requirement. 788 F.2d at 150. The making and affirmance of a good-faith finding here further refutes applicants' challenge to the sale.

c. Applicants are left with the contention (Appl. 12-14, 20-21) that this Court should grant review because the Chrysler bankruptcy is of national importance. As an economic matter, that is true, and blocking the transaction would undoubtedly have grave consequences. See pp. 23-25, infra. But even in the largest bankruptcy proceedings, this Court applies its traditional criteria to determine whether a particular legal issue is appropriate for plenary review. Here, the bankruptcy court carefully considered the trial record, entered detailed factual findings, and applied settled law to those facts. Applicants' fact-specific challenges do not satisfy the Court's established certiorari criteria. See Sup. Ct. R. 10.

2. Applicants have similarly failed to establish the requisite "fair prospect" that this Court would reverse the judgment of the court of appeals.

a. As noted above, applicants make no effort to rebut the lower courts' conclusion that they lack standing to bring their EESA challenge. Applicants can hardly claim a likelihood of success on the merits of that claim without showing that the Court has jurisdiction to reach the merits. In any event, although applicants contend that the government has "read out the word

'financial'" from the term "financial institution," Appl. 22-23, they do not discuss EESA's definition of the term "financial institution" (or even acknowledge that "financial institution" is a defined term under the statute). The applicable definition encompasses "any institution, including, but not limited to, any bank, savings association, credit union, security broker or dealer, or insurance company," that is "established and regulated under the laws of the United States or any State" and that "ha[s] significant operations in the United States." 12 U.S.C.A. 5202(5) (West Supp. 2009) (emphases added). Where Congress expressly defines a term, courts do not parse the individual words that make up the term; they look to the statutory definition. See, e.g., Burgess v. United States, 128 S. Ct. 1572, 1577 (2008). And, to the extent that the statutory definition is ambiguous, the interpretation of that provision adopted by the Treasury Department -- the federal agency entrusted by Congress with administration of EESA -- is entitled to judicial deference.

b. Applicants have also failed to demonstrate any reason to believe that this Court would reverse the determination of the courts below that the challenged sale is not a sub rosa reorganization plan. Applicants' contentions are in substance an attack on the bankruptcy court's findings of fact, and as discussed above, this Court will not set aside the considered and reasonable factual

findings of a trial court once they have been affirmed by the court of appeals. See p. 13, supra.

3. Further, applicants cannot show that a stay is warranted to prevent irreparable injury to themselves. To be sure, consummation of the sale would likely result in applicants receiving considerably less (approximately 29%) than the full amount of their secured claims. As explained above, however, the bankruptcy court found that the challenged sale is the only feasible alternative to liquidation, and that applicants would receive no more under a liquidation than they will receive if the sale goes forward. Absent a persuasive reason to believe that one or both of those findings is erroneous -- and applicants offer none -- a stay would not alleviate the injury that applicants have identified.

Applicants principally challenge Chrysler's sale of the collateral, in which applicants currently have a security interest, for $2 billion in cash, which will be used to satisfy the same debt that the collateral secured. App., infra, 20 ("[T]he security interest of the First-Lien Lenders [including applicants] will attach to the sale proceeds and there will be an immediate and indefeasible distribution of all of the $2 billion dollar sale price to the First-Lien Lenders, who are owed $6.9 billion."). If the sale does not occur, the bankruptcy court found, "[t]he only other alternative is the immediate liquidation of the company." Id. at 17; see also id. at 18 n.13 (finding that a purported third

option hypothesized by applicants was "simply not a viable option"). That liquidation, the court further found, will result in at most $800 million. Id. at 19.

Accordingly, there is no need to speculate about what applicants' security interest in Chrysler's assets would be worth in the future. If the sale to New Chrysler does not take place, Chrysler will be liquidated. Applicants will receive a pro rata share of the liquidation value, which is substantially less than the $2 billion purchase price. See App., infra, 19.[4] Although applicants' anticipated receipt of 29% of the full value of their secured claims may constitute an injury, that injury results from the severe diminution in value of Chrysler's assets serving as collateral; it is not attributable to the impending sale, and a stay would not prevent it from occurring.

Applicants contend that the bankruptcy court's valuation findings are wrong or biased. Appl. 9 & n.3. But at the hearing, applicants put on no expert evidence of valuation. Their unsupported assertion that the assets to be sold are actually worth $20 to $30 billion as a going concern (Appl. 9) is amply refuted not

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[4] Applicants suggest (Appl. 27) that the treatment of the unsecured portion of their claims against Chrysler will somehow constitute injury. But because the collateral is not worth enough to satisfy all first-priority secured claims, some portion will necessarily be unsecured, regardless whether the sale proceeds or Chrysler is liquidated.

only by the expert evidence on which the bankruptcy court relied,[5] App., infra, 19, but by the purchase price set in a bidding process that the court specifically found was fair, open, and calculated to bring the highest and best offer, id. at 38-39.

Applicants also contend (Appl. 25-27) that, because consummation of the sale will preclude continued challenges to it and thereby moot the case, they will necessarily suffer irreparable injury if a stay is denied. But because applicants have no meaningful prospect of reaping a tangible benefit if the sale is disapproved, they will suffer no practical harm if their objections are rendered moot. Moreover, unless this Court is prepared to grant certiorari and to decide the case on the merits by June 15, entry of the stay could itself have the effect of preventing the sale from going forward, since after June 15 Fiat will be legally entitled to withdraw from the agreement. See pp. 22-24, infra. The stay might therefore have the practical effect of granting applicants all the relief they seek in this case -- a particularly inequitable result where both the bankruptcy court and the court of appeals have rejected applicants' challenges.

4. Even if applicants could show a reasonable likelihood that this Court will both review and reverse the Second Circuit's decision, and if they could demonstrate an actual, irreparable

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[5] The bankruptcy court considered and rejected applicants' challenge (Appl. 9 n.3) to the credibility of Debtors' valuation expert. App., infra, 19 n.17.

injury that would be mitigated by interim relief, a stay would not be warranted. See Conkright, 129 S. Ct. at 1862 ("[I]n a close case it may be appropriate * * * to explore the relative harms to applicant[s] and respondent[s], as well as the interests of the public at large.") (quoting Rostker, 448 U.S. at 1308). Applicants cannot show that the benefit to them would outweigh the very serious harms to the other parties to this litigation and to the public interest generally that a stay would entail.

Applicant are correct (Appl. 12) that "the Chrysler bankruptcy carries profound implications for the Nation's economy." They are wrong, however, in asserting (ibid.) that the economy will feel these implications "[r]egardless of its outcome." Here, only two outcomes are possible. Either the sale will go forward, in which case New Chrysler will be able to restart the production lines -- or Chrysler will be liquidated. As the bankruptcy court specifically found, no other options are available. App., infra, 16-18 & n.15. Applicants' bid to block the sale would force the liquidation of Chrysler, a step whose economic consequences would be so severe that two national governments have committed unprecedented resources to prevent it. Id. at 30-31. Granting applicants that form of relief would be manifestly contrary to the public interest.

a. Granting a stay beyond Monday, June 15, jeopardizes the sale -- the only remaining alternative to the outright liquidation of Chrysler. The Master Transaction Agreement sets June 15 as the

deadline for the proposed sale to close. After that date, Fiat has the right to walk away.

Applicants concede these facts but assert that Fiat is "unlikely to back out of a deal with such favorable terms." Appl. 28. Applicants ignore the bankruptcy court's specific finding that Chrysler's assets are "deteriorating rapidly in value" while the company is in bankruptcy and production is idled. Appl. App. 25a. Indeed, Chrysler is losing more than $100 million per day. Id. at 23a. Continued delay in restarting production jeopardizes the physical condition of Chrysler's assembly plants and the viability of its parts suppliers and dealer distribution network -- all essential parts of the assets being purchased by the new company. App., infra, 17.

In earlier stay proceedings brought in the district court, Fiat explained that it was already concerned about the depreciating value of Chrysler's assets and that further delay would create a direct risk that the transaction would unravel. Fiat Opp. to Applicants' Mot. for Stay, 09-CV-4943 Docket entry No. 9, at 3 (S.D.N.Y. filed May 22, 2009); accord C.A. App. 1809 (5/27/2009 Trial Tr. 332-333). Against the bankruptcy court's findings and Fiat's own explanation, applicants offer no basis for optimism that Fiat will remain at the table, while Chrysler's assets depreciate and further rounds of litigation continue, if a stay is granted and the sale is not consummated by the current deadline.

The liquidation of Chrysler would have very severe effects on the American and Canadian economies. More than 38,000 Chrysler employees would lose their jobs; 23 manufacturing facilities and 20 parts depots will be shuttered; more than 3000 Chrysler dealers would suffer significant and possibly fatal harm to their businesses; and billions of dollars in health and pension benefits for current and former Chrysler workers would be wiped out. C.A. App. 2974-2975.

b. Even if the stay were continued for a short time and Fiat did not withdraw from the transaction, the consequences of delay for both Chrysler and the United States government would far outweigh any benefit to applicants. Chrysler is losing $100 million per day, Appl. App. 25a, the impact of which directly falls on the United States as provider of debtor-in-possession financing. These losses will continue while Chrysler remains in bankruptcy. As applicants note (Appl. 28), New Chrysler will not re-commence production of automobiles until mid-August even if the sale is consummated immediately. But every day that Chrysler remains in bankruptcy without consummating the sale threatens to postpone the resumption of production even further and to prolong the period of $100-million-per-day losses.

Applicants contend that the $100-million-per-day figure is unproven ("the only source being the statement of a Treasury official at his deposition") and that "a stay here will not cause

Chrysler any harm." Appl. 28. Those contentions lack merit. The bankruptcy court's factual finding that Chrysler is losing $100 million per day, Appl. App. 25a, is based on deposition testimony that was admitted at trial with applicants' express acquiescence and not contradicted at trial or elsewhere. C.A. App. 2109 (5/29/2009 Trial Tr. 41); see also C.A. App. 1447 (Feldman deposition 66:2-4).

c. Even if applicants had shown some actual harm to their security interest in the depreciating Chrysler collateral, such harm could not outweigh these grave and very real consequences.

First, applicants hold only a tiny fraction -- less than 1% -- of Chrysler's first-tier secured debt. App., infra, 11; see note 1, supra. The vast majority of debt holders in the same tier -- 92.5% -- have given their consent to the sale. Id. at 27. As the bankruptcy court correctly concluded, applicants agreed to be bound by that decision when it, along with all of the other first-tier secured creditors, gave the authorized agent the irrevocable authority to consent to the release of the collateral on behalf of all such creditors. App., infra, 24-30. As noted above, the consent by applicants' authorized agent was one of the bases on which the bankruptcy court concluded that applicants had no injury in fact for standing purposes. Appl. App. 11a-12a. That fully effective waiver, which applicants do not dispute in this Court, precludes them from asking this Court to give them relief that they

contracted away. As the bankruptcy court concluded, "[i]f [applicants] did not want to waive such rights, they should not have invested in an investment with such restrictions." App., infra, 30.

Second, and more importantly, even on applicants' view any potential harm to applicants pales by comparison to the harms to Debtors and the public interest. Applicants are owed approximately $42 million and contend that they will receive 29% of that sum from the sale. App., infra, 11. Even if all of the bankruptcy court's factual findings were in error, and even if applicants might recover the full $42 million owed them upon disapproval of the sale, that speculative possibility cannot outweigh the much graver prospect of losses many times that sum that Chrysler, its stakeholders, and the American and Canadian economies would suffer if the last remaining alternative to Chrysler's liquidation is foreclosed.

CONCLUSION

The application for a stay should be denied.

Respectfully submitted.

ELENA KAGAN
Solicitor General
Counsel of Record

JUNE 2009

No. 08A1096

In the Supreme Court of the United States

INDIANA STATE POLICE PENSION TRUST, ET AL.,

Applicants,

v.

CHRYSLER LLC, ET AL.,

Respondents.

SUPPLEMENTAL STATEMENT IN SUPPORT OF STAY APPLICATION

To the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States and Circuit Justice of the United States Court of Appeals for the Second Circuit:

The Indiana State Teachers Retirement Fund, Indiana State Police Pension Trust, and the Indiana Major Moves Construction Fund (collectively, the "Indiana Pensioners") respectfully supplement their Application for an immediate stay, filed on June 6 (the "Application"), in order to bring to the Court's attention information bearing on the Application and this Court's Order of June 8, extending the stay in this matter pending further order of Justice Ginsburg or the Court.

The Debtors (and the United States) have advanced the position throughout this case, including in its papers filed with this Court, that the section 363 Sale at issue here had to close before June 15 or Fiat would exercise its right to withdraw and the entire transaction would collapse. The courts below relied on such arguments and testimony in moving this case forward at an unprecedented pace.

In responding to the news of this Court's temporary stay, Sergio Marchionne, the CEO of Fiat, was quoted as follows:

> "'We would never walk away,' Marchionne said in response to a question about whether Fiat would pull out of the deal if it isn't completed by the June 15 deadline. 'Never.'" Rather, Marchionne said that "We should just be patient and let the system work."

See "Fiat Will 'Never' Walk Away from Chrysler, CEO Says."[1]

Whether or not the arguments and testimony were ever true, the Indiana Pensioners respectfully submit that the risk of termination by Fiat if the transaction does not close by June 15 no longer provides a basis for driving the timing of these proceedings.

Respectfully submitted,

/s/ Thomas M. Fisher

THOMAS E LAURIA
GLENN M. KURTZ
OWEN C. PELL
KAREN M. ASNER
WHITE & CASE LLP
1155 AVENUE OF THE AMERICAS
NEW YORK, NY 10036
(212) 819-8200

WHITE & CASE LLP
200 S. BISCAYNE BOULEVARD
MIAMI, FL 33131
(305) 371-2700

Counsel for Petitioners/Applicants

GREGORY F. ZOELLER
Attorney General of Indiana

THOMAS M. FISHER
Solicitor General (Counsel of Record)

ASHLEY E. TATMAN
Deputy Attorney General
Office of the Attorney General
Indiana Government Center South,
Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
(317) 232-6201

Dated: June 9, 2009

[1] http://www.bloomberg.com/apps/news?pid=20601087&sid=aS_6UlyCqJdmA

No. 08A1096

In the Supreme Court of the United States

In re Chrysler LLC, Debtor

INDIANA STATE POLICE PENSION TRUST, ET AL.,

Petitioners,

v.

CHRYSLER LLC, ET AL.,

Respondents.

CERTIFICATE OF SERVICE FOR SUPPLEMENTAL STATEMENT IN SUPPORT OF STAY APPLICATION

I hereby certify that on June 9, 2009, true and complete copies of the Supplemental Statement in Support of Stay Application were served upon counsel for all parties by mailing same by First-Class U.S. Mail and electronic mail, to the following:

James L. Bromley, Esq.
Deborah M. Buell, Esq.
Cleary Gottlieb Steen & Hamilton, LLP
1 Liberty Plaza
New York, NY 10006
dbuell@cgsh.com
International Union of United Automobile Aerospace and Agricultural Implement Workers of America, AFL-CIO ("UAW")

Adina H. Rosenbaum, Esq.
Public Citizen Litigation Group
1600 20th Street, N.W.
Washington, DC 20009
arosenbaum@citizen.org
azieve@citizen.org
Center for Auto Safety, Consumer Action, Consumers for Auto Reliability and Safety, National Association for Consumer Advocates

Harley E. Riedel, Esq.
Stichter, Riedel, Blain & Prosser, P.A.
110 East Madison Street
Tampa, FL 33602
hriedel@srbp.com
Brian Catalon, Farbod Nouriani, William Lovitz

Glenn M. Kurtz, Esq.
Thomas E. Lauria, Esq.
White & Case LLP
1155 Avenue of the Americas
New York, NY 10036
gkurtz@whitecase.com
tlauria@whitecase.com
Indiana Pensioners

Peter Pantaleo, Esq.
David Eisenberg, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017
ppantaleo@stblaw.com
deisenberg@stblaw.com

Gregory F. Zoeller, Esq.
Thomas M. Fisher, Esq.
Ashley Tatman, Esq.
Office of the Attorney General
302 W Washington Street, IGCS 5th Floor
Indianapolis, IN 46204-3795
Tom.Fisher@atg.in.gov
Ashley.Tatman@atg.in.gov
Indiana Pensioners

Phil Abelson, Esq.
Judy Liu, Esq.
Martin J. Bienenstock, Esq.
Dewey & LeBoeuf, LLP
1301 Avenue of the Americas
New York, NY 10019
pabelson@dl.com
jliu@dl.com
mbienenstock@dl.com
Chrysler Financial Services Americas LLC

Jeannette A. Vargas, Esq.
David S. Jones, Esq.
Tara M. La Morte, Esq.
U.S. Attorney's Office,
Western District of New York
86 Chambers Street
New York, NY 10007
jeannette.vargas@usdoj.gov
tara.lamorte2@usdoj.gov
matthew.troy@usdoj.gov
john.stemplewicz@usdoj.gov
United States of America

Joan Pilver, Esq.
Matthew F. Fitzsimmons Esq.
Office of the Attorney General/CT
110 Sherman St.
Hartford, CT 06105
joan.pilver@po.state.ct.us
matthew.fitzsimmons@po.state.ct.us
State of Connecticut

Jeffrey S. Trachtman, Esq.
Thomas Moers Mayer, Esq.
Ken Eckstein, Esq.
Kramer, Levin, Naftalis & Frankel, LLP
1177 Avenue of the Americas
New York, NY 10036
jtrachtman@kramerlevin.com
tmayer@kramerlevin.com
keckstein@kramerlevin.com
The Official Committee of Unsecured Creditors

Michael James Edelman, Esq.
Vedder Price, P.C.
1633 Broadway, 47th Floor
New York, NY 10019
mjedelman@vedderprice.com
Export Development Canada

John J. Rapisardi, Esq.
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
john.rapisardi@cwt.com

Roger D. Netzer, Esq.
Willkie Farr & Gallagher
787 Seventh Ave
New York, NY 10019
rnetzer@willkie.com
Oppenheimer Master Loan Fund, LLC
Oppenheimer Senior Floating Rate Fund

Nancy Winkelman, Esq.
Schnader Harrison Segal & Lewis LLP
140 Broadway
New York, NY 10005
nwinkelman@schnader.com
The Ad Hoc Committee of Consumer Victims of Chrysler

Scott D. Miller, Esq.
Andrew Dietderich, Esq.
Hydee R. Feldstein, Esq.
Sullivan & Cromwell, LLP
125 Broad Street
New York, NY 10004
millerse@sullcrom.com
dietdericha@sullcrom.com
feldsteinh@sullcrom.com
Fiat S.p.A. and New CarCo Acquisition LLC

Elizabeth J. Cabraser
Scott P. Nealey
Lieff Cabraser Heimann and Bernstein, LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
ecabraser@lchb.com
snealey@lchb.com
William Lovitz, Farbod Nourian, and Brian Catalano

Elena Kagan, Esq.
Neil Katyal, Esq.
Emily Spadoni, Esq.
William M. Jay, Esq.
Malcolm L. Stewart, Esq.
Office of the Solicitor General
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001
Emily.C.Spadoni@usdoj.gov
William.m.jay@usdoj.gov
Malcolm.l.stewart@usdoj.gov
United States of America

Corinne Ball, Esq.
Todd R Geremia, Esq.
Steven C. Bennett, Esq.
Gregory M. Shumaker, Esq.
Veerle Roovers, Esq.
Jones Day
222 E. 41st St.
New York, NY 10017
cball@jonesday.com
trgeremia@JonesDay.com
scbennett@jonesday.com
gshumaker@jonesday.com
vroovers@jonesday.com
Chrysler LLC

Babette Ceccotti, Esq.
Cohen, Weiss and Simon LLP
330 W. 42nd St.
New York, NY 10036
bceccotti@cwsny.com

Sander L. Esserman, Esq.
Stutzman Bromberg Esserman & Plifka, PC
2323 Bryan Street
Dallas, TX 75201
esserman@sbep-law.com
Patricia Pascale

/s/ Thomas M. Fisher
THOMAS M. FISHER
Solicitor General (Counsel of Record)
Office of the Attorney General
Indiana Government Center South,
Fifth Floor
302 West Washington Street
Indianapolis, Indiana 46204
(317) 232-6201

No. 08A1096

IN THE

Supreme Court of the United States

INDIANA STATE POLICE PENSION TRUST, ET AL.,
Applicants.

v.

CHRYSLER LLC, *ET AL.*,
Respondents.

RESPONSE TO APPLICANTS' SUPPLEMENTAL STATEMENT

Chrysler LLC *et al.* respectfully submits this response to the "supplemental statement" in support of the stay application filed by the Funds. In their supplement, the Funds quote statements attributed to Fiat's CEO in a news report and submit that this unexamined hearsay shows that the "risk of termination by Fiat if the transaction does not close by June 15 no longer provides a basis for driving the timing of these proceedings."

That is not true. The Master Transaction Agreement provides that the Fiat Sale will *automatically terminate* if the closing does not occur before June 15, 2009:

> Section 10.01. Termination. This Agreement shall be terminated at any time prior to the Closing Date, notwithstanding any requisite approval of this Agreement, as follows:
>
> * * *

> (c) automatically, if the Closing Date shall not have occurred on or before June 15, 2009 (the "End Date"); provided that termination shall not occur automatically if either the Company or Fiat elects in its sole discretion to extend the End Date by 30 days if such party has not obtained [certain regulatory authorizations] and all other conditions to Closing have been or are capable of being timely satisfied;

(Add., attached hereto, at 6a.)

At the three-day hearing on the Debtors' motion to approve the sale, the topic of the urgency of proceeding with the sale was also addressed extensively, and the Bankruptcy Court thereafter made express findings that, *inter alia*, "the Fiat Transaction is the only option that is currently available. The only other alternative is immediate liquidation of the company." (Stay Opp. App. 17a.) Indeed, at the hearing, the Fiat executive who lead that company's negotiation effort testified in response to the Funds' questioning on cross examination *on this very topic* that "if this agreement is not closed by June 15th, we would need to reconsider our ability to consummate the transaction." (Add 11a.) Fiat also testified that, without the interim debtor-in-possession financing provided to Chrysler that is conditioned on the sale closing, "Chrysler cannot stay alive," a fact that was uncontroverted at the three-day hearing and expressly found by the Bankruptcy Court in its decision approving the Fiat Sale. (Add. 10a.) This executive further testified that "in one month Chrysler needs to face payables of 1.5 billion on average" and that, if Chrysler remains idle for an additional month, Fiat's shareholders "will never support . . . paying 1.5 billion of payables without generating any revenue." (*Id.*)

The single hearsay statement reported by the media and relied upon by the Funds as a basis for trying to delay the closing further does not conflict with Fiat's sworn testimony in any way. Even if this statement were accepted as true, the notion that Fiat "will never walk away" does not change that the Fiat Sale will, by its express terms, *automatically terminate* if it is not consummated by June 15, 2009. Rather than "walk away," Fiat may well be willing to renegotiate the terms of some other, less-favorable transaction with Chrysler, the United Auto Workers, the U.S. Treasury, and the Canadian government. But there is no guarantee that a new deal could ever be struck; and, given Chrysler's precipitous state, every day past June 15 increases the risk that Chrysler's business will not be able to restart successfully.

Also, if the parties cannot come to terms on a re-negotiated deal in the event that their agreement automatically terminates on June 15, Fiat may instead pursue a strategy of purchasing only some of Chrysler's more desirable assets in a free-fall liquidation as opposed to entering into a re-negotiated transaction to purchase substantially all of Chrysler's assets as a going concern.[1] The point is that after June 15, 2009 the deal dies by its own terms and will have to be re-done or may be

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[1] This is not mere speculation. In another media report that the Funds did not bring to the Court's attention, Fiat's Chairman was quoted on *The Wall Street Journal*'s website this morning as stating that Fiat has a "plan B" if the Fiat Sale does not go forward as approved by the Bankruptcy Court. Analysts have also commented that Fiat appears to have positioned itself to purchase parts of Chrysler in a liquidation proceeding in bankruptcy. *See* S. Mufson, "Leaning on Fiat's Sense of Direction to Guide Chrysler," *The Washington Post*, Apr. 14, 2009, at A12 ("Many analysts also believe that Marchionne is positioning Fiat to scoop up Chrysler assets if the U.S. company ends up in bankruptcy.").

abandoned for Fiat to pursue some other strategy. The impact of such a course of events on all stakeholders in the Debtors' estates (including the Funds) and on the national economy would be devastating.

Further still, as Bankruptcy Court found, every day that proceeds without the Fiat Sale closing costs Chrysler ***$100 million*** (Stay App. 25a), a figure that dwarfs the "damages" that the Funds say they will sustain on their face-value $42 million investment if the $2 billion sale does not proceed and the company instead is forced into an immediate liquidation where no more than $800 million will be recovered for the Funds and all of its other co-lenders. *See infra* note 2.

For all of these reasons, there is a looming threat of drastic and irreparable harm to Chrysler, all of its constituencies—including the lenders under its senior secured financing facility—and the public interest if the Fiat Sale is not closed by June 15, 2009. And every day that passes between now and then only contributes substantially to this harm. While the Fiat Sale is important to the public interest, the Funds' objection to it is not. This is a holdup by a *single lender* who possesses less than 1% of the debt at issue, who signed a contract pursuant to which it is deemed to have consented to the Fiat Sale, and who will not be harmed, but will only benefit, by the sale as opposed to what the record shows and the Bankruptcy Court found is the only other option now available to the company.[2] The Funds'

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[2] The face-value of the Funds' investment is $42 million (not $100 million as they said in their application), they purchased it in a distressed state for $18 million, and will recover $12 million if the Fiat Sale proceeds. If the company's assets are liquidated for, in a best-case scenario, $800 million, the Funds will recover approximately $5 million.

entire strategy with this application is to wreak further havoc and apply coercive pressure by further delaying the sale. The Court should deny their application.

Respectfully submitted,

/ s / Thomas F. Cullen
THOMAS F. CULLEN
(Counsel of Record)
GREGORY M. SHUMAKER
JONES DAY
51 Louisiana Ave., N.W.
Washington, DC 20001
(202) 879-3900

CORINNE BALL
TODD R. GEREMIA
JONES DAY
222 East 41st Street
New York, New York
10017
(212) 326-3939

Counsel for Respondents, Chrysler LLC, et al.

Dated: June 9, 2009

No. _____

IN THE

Supreme Court of the United States

IN RE CHRYSLER LLC,
Debtors,

INDIANA PENSIONERS, INDIANA STATE TEACHERS RETIREMENT FUND,
Petitioners,

v.

CHRYSLER LLC, *ET AL.*,
Respondents.

ADDENDUM TO RESPONSE TO APPLICANTS' SUPPLEMENTAL STATEMENT

CORINNE BALL
TODD R. GEREMIA
JONES DAY
222 East 41st Street
New York, New York
10017
(212) 326-3939

THOMAS F. CULLEN
(Counsel of Record)
GREGORY M. SHUMAKER
JONES DAY
51 Louisiana Ave., N.W.
Washington, DC 20001
(202) 879-3900

Counsel for Respondents,
Chrysler, LLC et al.

MASTER TRANSACTION AGREEMENT

among

FIAT S.p.A.,

NEW CARCO ACQUISITION LLC,

CHRYSLER LLC

and

the other SELLERS identified herein

(b) Notwithstanding the foregoing or any other provision of this Agreement, either Fiat or the Company may provide to representatives of labor organizations representing Company Employees notice of the transactions contemplated by this Agreement, a copy of this Agreement, and such additional information, documents and materials (the "Information") as it determines is reasonably necessary to satisfy any legal or contractual obligations related to collective bargaining or its relationship with any labor organization but only in the event that either of the following occurs: (x) the other party gives its prior written consent to such disclosure (which consent shall not be unreasonably withheld, conditioned or delayed after the notifying party's request); or (y) to comply with a determination by the U.S. Treasury, court or agency of competent jurisdiction. In either case, the notifying party shall, to the extent reasonably practicable and permitted by Law, use commercially reasonable efforts to procure a confidentiality agreement with respect to the Information in form and substance reasonably satisfactory to the other party.

(c) No investigation or notice provided to any party pursuant to this Section 5.04 or the Confidentiality Agreement shall affect any representation or warranty in this Agreement of any party hereto or any condition to the obligations of the parties hereto.

Section 5.05 Regulatory and Other Authorizations; Notices and Consents.

(a) Each of Fiat, Purchaser and the Company shall, and shall cause each of their respective Affiliates to, use its best efforts to promptly obtain all waivers, authorizations, consents, orders and approvals of all Governmental Entities and officials which may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, the Alliance Agreements and the Transaction Agreements as promptly as reasonably practicable and will cooperate fully with each other in promptly seeking to obtain all such waivers, authorizations, consents, orders and approvals (such that the Closing will occur no later than the 35th day following the date hereof (the "Target Closing Date")).

(b) Fiat, Purchaser and the Company agree to make, as promptly as practicable, their respective filings (if required) pursuant to the applicable Antitrust Laws of the United States, Canada, the European Union (or any relevant member states of the European Union), and Mexico with respect to the Transactions, and to supply as promptly as practicable to the appropriate Governmental Entities any additional information and documentary material that may be required pursuant to the Antitrust Laws of the United States, Canada, the European Union (or any relevant member states of the European Union), and Mexico (such that the Closing will occur no later than the Target Closing Date):

(i) File notification pursuant to the HSR Act as promptly as practicable, and in any event within five Business Days of the date hereof.

(ii) If the European Commission confirms that it considers the transaction contemplated under this Agreement to be a concentration within the terms of Article 3 of the EC Merger Regulation, submit to the European Commission a draft request pursuant to Article 7(3) of the EC Merger Regulation within seven days of the date hereof; submit to the European Commission the formal request pursuant to Article 7(3) of the EC Merger Regulation as promptly as practicable thereafter, and submit the

Form CO to the European Commission pursuant to the EC Merger Regulation as promptly as practicable thereafter.

(iii) If the European Commission confirms that it considers the transaction contemplated under this Agreement not to be a concentration within the terms of Article 3 of the EC Merger Regulation, file a notification pursuant to the applicable Antitrust Laws in Germany and (if applicable) Austria as soon as practicable after the European Commission has so confirmed.

(iv) File an application for an Advance Ruling Certificate pursuant to the Competition Act (Canada) as promptly as practicable, and in any event within five days of the date hereof. Furthermore, file an Application for Review pursuant to the Investment Canada Act as promptly as practicable, and in any event within 10 days of the date hereof, and, if deemed advisable by Fiat, the Purchaser, and the Company, prepare and file a notification pursuant to Part IX of the Competition Act (Canada) and file a request for a notice from the Canadian Minister of Industry pursuant to Paragraph 16(2)(a) of the Investment Canada Act as promptly as practicable.

(v) File notification pursuant to the Mexican Federal Law on Economic Competition as promptly as practicable, and in any event within six days following the date hereof, and interface with the Federal Competition Commission within two days of the date of filing notification to advocate that they do not issue a stop order and resolve the matter as soon as practicable and within such time that, under the applicable laws of Mexico, Closing can occur by the Target Closing Date.

(c) Fiat will provide to the Company within one day of the date hereof a list of the jurisdictions where it will submit filings and notifications pursuant to applicable Antitrust Laws. Fiat, Purchaser and the Company agree to make as promptly as practicable, and in any event within five Business Days of the date hereof their respective filings and notifications as may be required under any other applicable Antitrust Laws of any jurisdictions in which Fiat intends to file notification (with the exception of China, Japan, Macedonia, Russia, Serbia, Turkey and Ukraine), and to supply as promptly as practicable to the appropriate Governmental Entities any additional information and documentary material that may be required pursuant to the Antitrust Laws of such jurisdictions (such that the Closing will occur no later than the Target Closing Date.

(d) Fiat, Purchaser and the Company shall each furnish to the other such necessary information and reasonable assistance as such other parties may request in connection with its preparation of any filing or submission that is necessary under the requirements of any Antitrust Law.

(e) Fiat, Purchaser and the Company each agree, to the extent permitted by Law, promptly to notify the other of any communication it or any of its Affiliates receives from any Governmental Entity relating to the Transactions and permit the other party to review in advance any proposed substantive communication by such party to any Governmental Entity. None of Fiat, Purchaser, nor the Company shall agree to participate in any meeting with any Governmental Entity in respect of any filings, investigation (including any settlement of the

investigation), litigation or other inquiry unless it consults with the other parties in advance and, to the extent permitted by such Governmental Entity, gives the other parties the opportunity to attend and participate at such meeting; provided, however, in the event one or more of the parties is prohibited by applicable Law or such Governmental Entity from participating in or attending any such meeting, then the party who participates in such meeting shall keep the other parties apprised with respect thereto to the extent permitted by Law. To the extent permitted by Law, Fiat, Purchaser and the Company will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other parties may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods, including under the HSR Act, including, to the extent reasonably practicable, providing to the other parties in advance of submission drafts of all filings, submissions, correspondence or other written communications, providing the other parties with an opportunity to comment on the drafts, and, where practicable, incorporating such comments, if any, into the final documents. To the extent permitted by applicable Law, Fiat, Purchaser and the Company will provide each other with copies of all correspondence, filings or written communications between them or any of their representatives, on the one hand, and any Governmental Entity or members of its staff, on the other hand, with respect to the Transaction Agreements and the Transactions.

(f) None of Fiat, Purchaser, the Company or their respective Affiliates shall be required to pay any fees or other payments to any Governmental Entities in order to obtain any such authorization, consent, order or approval (other than normal filing fees and administrative fees that are imposed by Law on Fiat or Purchaser), and in the event that any fees in addition to normal filing fees imposed by Law may be required to obtain any such authorization, consent, order or approval, such fees shall be for the account of Purchaser. Notwithstanding anything to the contrary herein, none of Fiat, the Company or Purchaser shall be required to agree to any divestiture, sale or license (including any License) of or Lien on any properties, assets or businesses by Fiat, Purchaser, the Company or any of their respective Affiliates of any business, assets or property of Fiat, Purchaser, the Company or any of their respective Affiliates, or the imposition of any limitation on the ability of any of the foregoing to conduct their respective businesses or to own or exercise control of their respective assets and properties.

(g) In the event that the Antitrust Laws of a particular jurisdiction (a "Delayed Jurisdiction") would prevent a closing from occurring with respect to such Delayed Jurisdiction by the Target Closing Date, Fiat and the Company shall cooperate fully and use their reasonable best efforts to develop a suitable plan which will (i) permit the Closing to occur on or as promptly as practicable following the Target Closing Date with respect to all jurisdictions other than the Delayed Jurisdictions and (ii) construct an appropriate mechanic to effect a closing in the Delayed Jurisdiction as soon as practicable following the date on which a closing in any such Delayed Jurisdiction is permitted under the applicable Antitrust Law. Fiat and the Company shall cooperate fully and use their best efforts to amend this Agreement and execute and deliver such other documents as appropriate to give effect to such subsequent closing with respect to the Delayed Jurisdictions (and, if necessary, provide appropriate support and transition arrangements with respect to such Delayed Jurisdictions as may be appropriate or required by the applicable Governmental Entity). With respect to the business and assets being purchased by the Company pursuant to the Deferred Closing Agreement, Fiat and the Company agree to cooperate

fully and use their reasonable best efforts to provide appropriate support and transition arrangements with respect to such business and assets as may be appropriate or required by the applicable Governmental Entity. Nothing in this Section 5.05(g) shall require Fiat or the Company to take any action which would materially and adversely affect Fiat or the Company, as the case may be.

(h) Should the VEBA Trust be required to complete any filing or notification under any Antitrust Law, the VEBA Trust shall have the same rights as afforded Fiat, Purchaser, and the Company under this Section 5.05 provided that the VEBA Trust undertake the same obligations required of Fiat, Purchaser, and the Company in this Section 5.05. In any jurisdiction in which Fiat has or will complete any filing or notification under any Antitrust Law Fiat shall cause the VEBA Trust to be included as a filing party in its filing (without cost or expense to the VEBA Trust).

Section 5.06 Restructuring Transactions. Notwithstanding Section 5.01, the Company shall, and shall cause the Company Subsidiaries, to use reasonable efforts to (i) transfer the Purchased Assets or Assumed Liabilities to one or more Subsidiaries of the Purchaser at the Closing as the Purchaser may, at least 10 days before the Closing, designate in writing to the Company (provided, for the avoidance doubt, that the Purchased Assets shall be transferred to the Purchaser, in the absence of such designation, as provided under the other provisions of this Agreement); (ii) facilitate the transfer of the property subject to the Auburn Hills Agreement or the entity in which such property is held, including causing such property or entity to be transferred to the Company or a Company Subsidiary (in each case as designated in writing by the Purchaser at least 10 days before the Closing and in accordance with the terms of the Auburn Hills Agreement) in advance of the transfer of such property or such entity to the Purchaser (or one or more Subsidiaries of the Purchaser as the Purchaser may, at least 10 days before the Closing, designate in writing to the Company); (iii) set off intercompany receivables and intercompany payables owed by one Purchased Company to another Purchased Company in advance of the Closing (each such transaction described in clauses (i), (ii) and (iii), a "Restructuring Transaction"). Each Restructuring Transaction shall be implemented in a manner reasonably satisfactory to Fiat, and the Company shall regularly consult with Fiat regarding the manner and the status of the implementation of Restructuring Transactions (including providing Fiat with copies of all material agreements or documents executed in connection with such transactions). The Company and Fiat agree to cooperate to arrange each Restructuring Transaction in a tax efficient manner, provided that neither Fiat nor the holders of the equity interest in the Company are required by this Section 5.06 to bear material adverse tax consequences not adequately compensated by the other party (taking into account compensation already provided under other provisions of this Agreement, including Section 7.05) as a result of being a party to any Restructuring Transaction, unless written consent, by Fiat in the case of Fiat or by CGI in the case of the holders of equity interests in the Company, is given.

Section 5.07 Daimler Transactions. Notwithstanding Section 5.01, the Company shall, and shall cause the Company Subsidiaries to, use reasonable best efforts to cause the proposed parties thereto to enter into the CGI Indemnity Assignment Agreement and the Daimler Agreement (the "Daimler Transactions").

Section 9.06 Remedies. Each party hereto acknowledges and agrees that (a) following the Closing, the indemnification provisions of Section 9.02 and Section 9.03 shall be the sole and exclusive remedies for any breach of the representations and warranties in this Agreement, and (b) anything herein to the contrary notwithstanding, no breach of any representation, warranty, covenant or agreement contained herein of any of the parties shall give rise to any right of any party hereto, after the consummation of the transactions contemplated by this Agreement, to rescind this Agreement or any of the transactions contemplated hereby. Each party, after becoming aware of any event which could reasonably be expected to give rise to any Losses that have or could give rise to a right of such party to indemnification under this ARTICLE IX, shall take all commercially reasonable steps to mitigate such Losses.

ARTICLE X

TERMINATION, AMENDMENT AND WAIVER

Section 10.01 Termination. This Agreement shall be terminated at any time prior to the Closing Date, notwithstanding any requisite approval of this Agreement, as follows:

(a) automatically, if the U.S. Treasury Loan Documents (or binding commitment letters and term sheets in respect thereof) have not been executed and delivered by the US Treasury in the form presented prior to the date hereof by May 18, 2009, or if the Canada Loan Documents (or binding commitment letters and term sheets in respect thereof) have not been executed and delivered by Export Development Canada in the form presented prior to the date hereof by May 18, 2009, in each case unless Fiat agrees in writing to extend such date;

(b) by mutual written consent of each of the Company and Fiat;

(c) automatically, if the Closing Date shall not have occurred on or before June 15, 2009 (the "End Date"); provided that termination shall not occur automatically if either the Company or Fiat elects in its sole discretion to extend the End Date by 30 days if such party has not obtained the authorizations, consents, orders and approvals of Governmental Entities required pursuant to Section 5.05(a) and Section 5.05(b) and all other conditions to Closing have been or are capable of being timely satisfied;

(d) by the Company, upon a breach of any representation, warranty, covenant or agreement on the part of Fiat or Purchaser set forth in this Agreement, or if any representation or warranty of Fiat or Purchaser shall have become untrue, in either case such that the conditions set forth in Section 8.01 are not capable of being satisfied on or before the End Date; provided, that the Company shall not have the right to terminate this Agreement if the Company is then in material breach of any of its representations, warranties or covenants contained in this Agreement;

(e) by Fiat, upon a breach of any representation, warranty, covenant or agreement on the part of the Sellers set forth in this Agreement, or if any representation or warranty of the Sellers shall have become untrue, in either case such that the conditions set forth in Section 8.02 are not capable of being satisfied on or before the End Date; *provided*, that Fiat shall not have the right to terminate this Agreement if Fiat or Purchaser is then in material breach of any of its representations, warranties or covenants contained in this Agreement; or

(f) by either Fiat or the Company, if any Governmental Entity shall have issued a Governmental Order or taken any other action permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, and such Governmental Order or other action shall have become final and nonappealable.

(g) automatically, if any Selling Group Member shall enter into a Contract with respect to a Competing Transaction or if the Bankruptcy Court shall enter an order approving a Competing Transaction;

(h) automatically, if the Sellers consummate a Competing Transaction;

(i) by Fiat, if the Sellers do not file the Petitions and the Sale Motion with the Bankruptcy Court on or before May 5, 2009;

(j) automatically, if the Bidding Procedure Order is not entered by May 15, 2009, unless Fiat agrees in writing to extend such date or if, after the Bidding Procedures Order is entered, the Sale Order authorizing this Agreement is not entered by the End Date unless Fiat agrees in writing to extend that date; or

(k) automatically at 11:59 pm on the third business day (or such later time to which Fiat may consent to extend such date in writing) after the Debtors file any notice of designation of a Lead Bid and/or Secondary Bid with the Bankruptcy Court (as such terms as defined in the Bid Procedures Order), unless either of the following has occurred prior to the end of such period:

(i) the Debtors shall have filed a notice with the Court prior to such time stating that the Debtors have rejected any and all Lead Bids and/or Secondary Bids; or

(ii) the condition in Section 8.02(q) has been fulfilled.

Section 10.02 Effect of Termination; Break-Up Fee. (a) In the event of termination of this Agreement pursuant to Section 10.01 hereof, except for Section 5.04, Section 10.02 and ARTICLE XI, which shall survive any such termination, this Agreement shall forthwith become void and there shall be no liability under this Agreement on the part of any party hereto or any of their respective officers or directors and all rights and obligations of each party hereto shall cease; *provided, however*, that nothing herein shall relieve any party from liability for any material breach.

(b) In the event that that a Person other than Purchaser is selected as the Successful Bidder (as defined in the Bidding Procedures Order), then the Company shall pay to Fiat or an entity designated by Fiat, upon termination of this Agreement, a fee (the "Break-Up Fee") of $35 million by wire transfer of immediately available funds to an account designated by Fiat.

Section 10.03 Amendment. This Agreement may not be amended except by an instrument in writing signed by each of the parties hereto.

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50002

- -x

In the Matter of:

CHRYSLER LLC, et al.

Debtors.

- -x

United States bankruptcy court

One Bowling Green

New York, New York

May 27, 2009

10:03 AM

B E F O R E:

HON. ARTHUR J. GONZALEZ

U.S. BANKRUPTCY JUDGE

A. I have no evidence.

Q. Okay. And with regard to the other manufacturers that have begun selling these platforms, it's only really been over the course of the last six to twelve months, right?

A. Over the last two years probably.

Q. Okay. And in terms of integrating that technology into Chrysler facilities, there will be a substantial time lag between when the deal closes and when Fiat technology is able to be used in Chrysler facilities, right?

A. We would need eighteen months to start manufacturing one of our platforms in a Chrysler plant, and between eighteen and twenty-four months to start manufacturing our power train in one of the Chrysler facilities. The timing of the introduction of a power train is longer than the one of a platform because we need to get all necessary approvals from the EPA and the car as related to the emission compliance of the engine.

Q. Okay. And it could take as long as thirty-six months to complete introducing the Fiat technology into the U.S. market?

A. Thanks God it's much faster. Twenty-four months should be the longest.

Q. Okay. Is it Fiat's intention to terminate the -- its -- the master transaction agreement if that transaction does not close by June 15th?

A. I'm sorry, could you rephrase your question?

Q. Yeah. Is it Fiat's intention to terminate the master

transaction agreement if it does not close by June 15th?

A. I guess that it will be extremely difficult to judge the situation of the company at that time and whether or not it's still possible to consummate the transaction.

Q. Okay. So as you sit here today you're not sure whether or not Fiat would be willing to consummate the transaction even after the June 15th date?

A. We clearly look at the economics of the company and the ability of the company to go forward. As you know, today all Chrysler plants are not manufacturing any cars and any power train. So Chrysler today is not generating any revenue.

Q. Okay.

A. And without the DIP budget, of course, Chrysler cannot stay alive.

Q. But Fiat does have a long-term view of this investment, right?

A. That's correct.

Q. Okay. So it's not just about the next weeks or months; it's about the next ten or twenty years?

A. But let me tell you, in one month Chrysler needs to face payables of 1.5 billion on average. And without generating any revenue 1.5 billion is a value that's -- it's not value creation, and our shareholders will never support Fiat paying 1.5 billion of payables without generating any revenue. A long-term investment is different from a bearing cost.

Q. And is the lack of revenue over this period as a result of Chrysler's decision to shut down its facilities?

A. Yes, because there is a -- there was a huge inventory sitting in Chrysler dealer network, more than 320,000 cars that needs to be reused, strongly reused, otherwise the problem that basically forced Chrysler into this situation will not be solved and properly addressed.

Q. But it was Chrysler's decision to shut down the facilities?

A. Yes, it was.

Q. Chrysler can make the decision to start them back up again?

A. Yes, Chrysler can make that decision. I'm not sure that would be a wise decision given the market trend and the number of cars still sitting in the inventory today, 295,000 as we speak.

Q. And that doesn't change your view about whether or not Fiat would terminate this agreement if it doesn't close on June 15th?

A. As I said, if this agreement is not closed by June 15th, we would need to reconsider our ability to consummate the transaction.

MR. ZAKIA: Thank you.

Sorry, one second, Your Honor.

Q. One last question. The master transaction agreement

provides that Chrysler has the right to extend the closing date till July 15th if it doesn't secure certain regulatory approvals. Are you aware of that fact?

A. Yes, I do.

Q. Okay. And do you know if Chrysler has secured those approvals?

A. To the best of my knowledge, Chrysler is actively trying to secure those approvals.

Q. Okay. And do you know whether or not they will succeed in securing those approvals by June 15th?

A. I have no indication that Chrysler will not succeed.

Q. But you don't know that they will?

A. I don't know that they will.

MR. ZAKIA: Thank you.

THE COURT: Any other cross?

MS. BROWN: Good evening, Your Honor. Amy Brown from Squire Sanders on behalf of the Committee of Chrysler Affected Dealers.

CROSS-EXAMINATION

BY MS. BROWN:

Q. Good evening.

A. Good evening.

Q. You are aware that Chrysler has filed a motion seeking to reject the dealer agreements of twenty-five percent of its dealer body, correct?

No. 08A1096

IN THE

Supreme Court of the United States

INDIANA STATE POLICE PENSION TRUST, ET AL.,
Applicants,

v.

CHRYSLER LLC, *ET AL.*,
Respondents.

RESPONSE TO APPLICANTS' SUPPLEMENTAL STATEMENT

To the Honorable Ruth Bader Ginsburg, Associate Justice of the Supreme Court of the United States and Circuit Justice of the United States Court of Appeals for the Second Circuit:

Respondent Fiat S.p.A. respectfully submits this response to the "supplemental statement" submitted by the Indiana Pensioners in support of their emergency stay application. The Indiana Pensioners quote a comment attributed to Fiat's chief executive officer, Sergio Marchionne, in the news media yesterday to the effect that Fiat will "never walk away" from Chrysler. From that comment, the Indiana Pensioners ask this Court to conclude that the "risk of termination by Fiat if the transaction does not close by June 15 no longer provides a basis for driving the timing of these proceedings." That conclusion is unwarranted.

The crucial point that the Indiana Pensioners ignore is that if the sale transaction approved by the bankruptcy court does not close by June 15, 2009, it

will terminate under its express terms. Section 10.01 of the Master Transaction Agreement provides that it will terminate *automatically* "if the Closing Date shall not have occurred on or before June 15, 2009." The sole exception — that Fiat or Chrysler can elect to extend the Closing Date for 30 days if certain regulatory approvals have not yet been obtained — is inapplicable because those approvals are already in hand. The automatic termination reflects the delicate balance of the interests of numerous stakeholders in Chrysler's rescue and the recognition that after June 15, 2009 the likely deterioration in Chrysler's fortunes would mean that none of those stakeholders would be willing to continue to be bound by the original bargain.

If the sale transaction is not completed soon, there can be no assurance that a replacement transaction could be structured and agreed that would preserve any aspect of Chrysler as a going concern. As Alfredo Altavilla of Fiat testified at the sale hearing, without the interim debtor-in-possession financing being provided to Chrysler by the U.S. Treasury and Canada, "Chrysler cannot stay alive," a fact that the Indiana Pensioners have never disputed. The U.S. Treasury has no obligation to continue providing such debtor-in-possession financing after June 30, 2009. Moreover, once the Master Transaction Agreement terminates on June 15, 2009, it may simply be impossible to get the large number of stakeholders that are critical to the success of the new enterprise to agree on the terms of a replacement transaction.

Thus, whatever commitment Fiat may have to provide the industrial support and management expertise required to restore Chrysler to viability, any further delay imperils the chances of achieving an agreement that would permit Fiat to provide such support, leaving the alternative of a devastating liquidation of Chrysler. Even the publicity surrounding the current delay puts Chrysler at further risk by sowing seeds of uncertainty among the many constituencies — employees, suppliers, dealers and taxpayers — who have supported this transaction and whose continued belief in the potential renewed viability of Chrysler is crucial to its survival. Further delay would only compound this risk while serving no countervailing public interest.

Fiat's commitment to Chrysler is entirely consistent with Fiat's obligation to its own shareholders to ensure that it retains the benefit of its original bargain by requiring additional concessions from other stakeholders to compensate Fiat for the diminution in the value of Chrysler's assets and the incremental cost of further disruption in Chrysler's commercial operations that will occur if the transaction does not close by the agreed deadline. Moreover, that commitment takes away nothing from the fact that Chrysler could well be forced into liquidation if the sale transaction is not completed on or before June 15, 2009. As the bankruptcy court found, and the Indiana Pensioners do not deny, such a liquidation would inflict grievous harm on many constituencies, including thousands of people in the State of Indiana who are employed by Chrysler or one of its suppliers or dealers.

As opposed to the purely monetary interests being pursued by the Indiana Pensioners, there are literally thousands of others who will be irreparably harmed if the sale transaction is not completed and Chrysler goes into liquidation. Moreover, given the importance of Chrysler to the economy at large, the public interest weighs heavily in favor of permitting the sale transaction to be completed. The Court should reject the efforts of the Indiana Pensioners to stand in the way of that happening.

Respectfully submitted,

/ s / Steven L. Holley
STEVEN L. HOLLEY
(Counsel of Record)
JOHN L. WARDEN
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4737

Counsel for Respondent Fiat S.p.A.

Dated: June 9, 2009

IN THE SUPREME COURT OF THE UNITED STATES

No. 08A1096

INDIANA STATE POLICE PENSION TRUST, ET AL., APPLICANTS

v.

CHRYSLER LLC, ET AL.

ON APPLICATION FOR STAY

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The Solicitor General, on behalf of the United States of America, respectfully submits this supplemental memorandum in opposition to the application for a stay and supplemental statement in support thereof submitted by the Indiana Funds.

Applicants agree that, if the transaction does not close by June 15, Fiat will no longer have an obligation to go forward with the transaction as currently structured. Appl. 28 ("[I]t is true that Fiat could back out of the deal if it is not consummated by June 15"). Applicants predict, both in their principal filing and in their supplemental statement, that if this Court delays approval of the transaction beyond June 15, Fiat will not exercise its right to renegotiate or abandon the transaction. Applicants' prediction is not well founded: if the sale is not consummated by June 15, there is a substantial possibility that Fiat will abandon the transaction or insist on materially different terms as a condition of its participation. And even if Fiat were ultimately willing to

consummate the sale on the existing terms after June 15, the delay occasioned by a stay would result in irreparable harm to the Debtors and the public interest.

1. By its terms, the Master Transaction Agreement will terminate "automatically, if the Closing Date shall not have occurred on or before June 15, 2009," absent a provision for extensions not applicable here. C.A. App. 3277 (Agreement § 10.01(c)).[1] Whether or not Fiat intends "never [to] walk away" from the transaction outright, Applicants' Supp. Statement 2 (citations omitted), it is undisputed that after June 15, neither Fiat nor Debtors will be bound by the proposed contract as it is currently structured. If Fiat and Debtors wish to continue with the transaction, a new agreement will be necessary, and Fiat will be free to insist on additional concessions as a condition of its approval. If a new agreement is reached, further approval proceedings in the bankruptcy court may well be required.

It is also undisputed that Chrysler's condition worsens each day it remains in bankruptcy, and that Fiat is aware of that situation. First, as the bankruptcy court explained, Chrysler's

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[1] Applicants' representation that Fiat "has the express right to extend its purchase rights for another 30 days," Appl. 28, wrongly suggests that Fiat can do so under any circumstances. Applicants omit the key fact that the provision for that 30-day extension applies only if the party electing the extension has not obtained certain relevant regulatory authorizations, C.A. App. 3277 (Agreement § 10.01(c)), a contingency not present here. All regulatory authorizations have been obtained, so this extension provision does not apply.

value has dropped significantly as Chrysler has spent its cash, sold its remaining cars, and discovered that two previously profitable car lines were no longer profitable and could not be individually sold at going-concern value. App. to Gov't Memo. 19 & n.16. Second, a Fiat representative testified at trial less than two weeks ago that it was "extremely difficult to judge the situation of [Chrysler] at that time [after June 15] and whether or not it's still possible to consummate that transaction," given considerations such as the lengthening period during which Chrysler generates no revenue and faces billions of dollars in payables. C.A. App. 1809-1810 (5/28/2009 Trial Tr. 332-334 (Altavilla testimony)).

Since that testimony was given, Chrysler's already perilous situation has continued to deteriorate. If Fiat is released from the obligation to consummate the transaction as currently structured, it will be free to demand additional concessions before concluding a new agreement. Nothing in the brief statement attributed to Fiat's CEO rules out that possibility. And if the parties to the sale are unable to agree on the terms of a new agreement, the alternative to the transaction is by now well established -- liquidation, with catastrophic effects. App. to Gov't Memo. 16-17, 24.

2. Even if, for the entire period of a stay, Fiat would remain wholly committed to the transaction as currently structured,

the stay would still seriously jeopardize the transaction. The Debtors are operating in bankruptcy by using debtor-in-possession financing lent by the United States government. Because Chrysler is not manufacturing cars and continues to lose money during each day of bankruptcy, each day consumes approximately $100 million in such financing. Appl. App. 25a; C.A. App. 1447 (Feldman deposition 66:2-4). As the President made clear when the Fiat transaction was announced, there are limits to what the government can lend. Remarks by the President on the Auto Industry (Apr. 30, 2009) <http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-on-the-Auto-Industry/> ("[W]e simply cannot keep this company, or any company, afloat on an endless supply of tax dollars. My job, as President, is to ensure that if tax dollars are being put on the line, they are being invested in a real fix that will make Chrysler more competitive.").

Accordingly, the need for government financing means that delay threatens the transaction in two ways. First, if the closing is delayed by more than approximately ten days, a sufficient amount of the current commitment of debtor-in-possession financing from the United States will have been consumed as to require the government either to increase its overall funding to the detriment of taxpayers, or abandon its role in the transaction. Second, that financing matures on June 30, 2009. If the transaction still has not closed, the government will be owed repayment. No alternative

non-governmental source of financing appears to be available. At that time, based on the then existing facts and circumstances, Chrysler could be forced to liquidate even if Fiat remains willing to participate in the transaction.

3. As set out in the government's principal response, even a delay of the transaction from now until June 15 poses material harms to Chrysler and to the public interest. Gov't Memo. 24. The bankruptcy court agreed, as evidenced by its shortening of the usual ten-day stay period. So did the court of appeals, which issued its mandate with only a limited further stay.

While Chrysler remains in bankruptcy with no confirmed alternative to liquidation, its situation deteriorates. Physical plant is deteriorating through disuse; so is human capital, as workers remain off the job. Although consummation of the sale would not result in the immediate re-commencement of manufacturing at Chrysler facilities, any additional delay threatens to exacerbate the serious problems that already exist, and thus to cause irreparable harm to the parties and to the public. See, e.g., C.A. App. 1567-1568 (detailing the significant effects of continued bankruptcy on suppliers and other key elements of the Chrysler business).

CONCLUSION

The application for a stay should be denied.

Respectfully submitted.

ELENA KAGAN
Solicitor General
Counsel of Record

JUNE 2009